

# City of Hampton, VA

22 Lincoln Street  
Hampton, VA 23669  
[www.hampton.gov](http://www.hampton.gov)



## **Council Agenda**

**Wednesday, September 09, 2015**

**1:00 PM**

**Council Chambers, 8th Floor, City Hall**

## **City Council**

***Linda Curtis, W. H. "Billy" Hobbs, Jr., Will Moffett, Teresa V.  
Schmidt, Chris Snead, Donnie R. Tuck,  
George E. Wallace, Mayor***

### ***Staff:***

***Mary Bunting, City Manager***

***Vanessa T. Valdejuli, City Attorney***

***Katherine K. Glass, CMC, Clerk of Council***

Last Published: 9/4/2015 1:23:12 PM

## **CALL TO ORDER**

## **AGENDA**

1. **15-0265** Applying a Generational Lens to Position the City for the Future
2. **15-0266** Virginia Coastal Protection Act

## **REGIONAL ISSUES**

## **NEW BUSINESS**

## **CLOSED MEETING**

3. **15-0262** Closed session pursuant to Virginia Code Section 2.2-3711.A.1 and .3 to discuss appointments as listed on the agenda and City Council appointees; to discuss or consider the acquisition of real property for a public purpose and/or the disposition of publicly held real property in the areas of Coliseum Central, Downtown Hampton, Wythe, Kecoughtan Corridor and Pembroke Avenue where discussion in an open meeting would adversely affect the bargaining position of negotiating strategy of the city council.
- 
- 15-0260** to consider appointments to the Purchasing and Procurement Oversight Committee
- 15-0270** to consider appointments to the Social Services Local Advisory Board
- 15-0271** to consider appointments to the Animal Control Advisory Committee
- 15-0272** to consider appointments to the Finance Committee
- 15-0274** to consider an appointment to the Peninsula Agency on Aging
- 15-0275** to consider an appointment to the Hampton Arts Commission
- 15-0276** to consider appointments to the Board of Review of Real Estate Assessments

**CERTIFICATION**

**4. 15-0263 Resolution Certifying Closed Session**

**Contact Info:**

**Clerk of Council, 757-727-6315, [council@hampton.gov](mailto:council@hampton.gov)**



**City of Hampton, VA**

**Agenda Review**

**File Number: 15-0265**

22 Lincoln Street  
Hampton, VA 23669  
[www.hampton.gov](http://www.hampton.gov)

---

File Number: **15-0265**

Request Number: **R-2015-00255**

File Type: **Briefing / Presentation /  
Hearing**

Department: **City Manager**

Introduced: **9/9/2015**

Date of Final Action:

Enactment Number:

Effective:

Status: **Received By Clerk's Office**

---

Created By: **Annette Oakley**

Phone:

Requestor: **Brian DeProfio**

Phone: **727-6884**

Presenter: **John Martin, President,  
Southeastern Research Institute**

Phone: **804-342-1762**

Title: **Applying a Generational Lens to Position the City for the Future**

Action Requested: **No Action Required**

Estimated Time: **30 Minutes**

Indicators:

Advertised:

Fiscal Notes:

Attachments:

---

Date	Acting Body	Action
8/31/2015		Received By Clerk's Office

---

**BRIEF BACKGROUND STATEMENT:**

Mr. John Martin of the Southeastern Research Institute will brief the City Council on how generational changes create new challenges and opportunities that will shape the future of the City.





City of Hampton, VA

Agenda Review

File Number: 15-0266

22 Lincoln Street  
Hampton, VA 23669  
[www.hampton.gov](http://www.hampton.gov)

File Number: 15-0266

Request Number: R-2015-00256

File Type: Briefing / Presentation /  
Hearing

Department: City Manager

Introduced: 9/9/2015

Date of Final Action:

Enactment Number:

Effective:

Status: Received By Clerk's Office

Created By: Annette Oakley

Phone:

Requestor: Brian DeProfio

Phone: Director of Budget &  
Strategic Initiatives

Presenter: Brian DeProfio, Director of Budget &  
Strategic Initiatives

Phone: 727-6884

Title: Virginia Coastal Protection Act

Action Requested: No Action Required

Estimated Time: 20 Minutes

Indicators:

Advertised:

Fiscal Notes:

Attachments: Virginia Coastal Protection Act Fact Sheet  
Presentation

Date	Acting Body	Action
8/31/2015		Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:

The Chesapeake Climate Action Network (CCAN) approached the City this summer to request a resolution of support of the Virginia Coastal Protection Act. The Virginia Coastal Protection Act is a "cap and trade" arrangement, whereby the State would set a limit on carbon emissions and auction off carbon emission credits to emitters up to the State cap. Once the credits are auctioned, they could also be sold in the private market. The State adopting the VCPA would result in Virginia joining the Regional Greenhouse Gas Initiative (RGGI), which is a consortium of east coast states from Main to Maryland, with the exception of Pennsylvania, who already have a similar cap and trade structure in place. The revenues generated by the State (estimated at \$200 million per year by 2020) would then be dedicated to Hampton Roads Coastal Adaptation Efforts (50%), Statewide Energy Efficiency and Clean Energy Programs (35%), Southwest Virginia Economic Development Assistance (10%) and RGGI Programmatic Expenses (5%). The new EPA regulations unveiled recently pushes states to come up with plans to address carbon

pollution, and the VCPA is a mechanism that could be used to meet the new federal rules in Virginia.

# The Virginia Coastal Protection Act

## SUPPORT HB 2205/SB 1428: Funds to Fight Flooding & Support Climate Resilience

The water is coming. Mayors, families, businesses, and all who live and visit Hampton Roads know that flooding has become one of the most challenging public policy issues facing coastal Virginia. The increased warming, expanding, and rising of ocean waters due to climate change, combined with the area's sinking land, will cause an additional 1.5 feet of sea level rise in the next 20 to 50 years and as much as 7.5 feet by century's end, according to the Virginia Institute of Marine Science.<sup>i</sup> It's time for collective action.

### Communities Are Getting Wet. It's Getting Worse. And We Need Solutions Now.

Lawmakers from both parties have acknowledged the need for action to combat sea level rise. But action is not possible without a dedicated source of funding.

**As a win-win solution, Virginia should join the Regional Greenhouse Gas Initiative (RGGI), which will provide crucial funds for adaptation measures in Hampton Roads while lowering emissions of heat-trapping pollution.** Half of the revenues generated from the sale of carbon allowances will help fund coastal climate resilience efforts. The other half will support economic development in Southwest Virginia, and clean energy and efficiency investments all over the Commonwealth.

### Support for Action

The 2014 General Assembly unanimously passed legislation (HJ 16/SJ 3) to create a joint subcommittee to recommend adaptation solutions. We now need funds to implement them.

### Fund Flooding Solutions for Our Coast

**The Dutch engineering firm Fugro estimates that Norfolk needs at least \$1 billion to fully adapt to the flooding threat posed by climate change.**<sup>ii</sup> The billion dollar price tag equals Norfolk's entire annual operating budget.<sup>iii</sup> The cost of protecting the entire region's 1.7 million citizens, business community, and military assets will be much higher, requiring immediate action and significant investments.

### Invest in Clean Energy and Efficiency

Virginia lags far behind neighboring states in solar energy development and does not have a single wind farm. **We have also reduced energy use by less than 1% below 2006 levels—well off the pace of reaching the state's goal of reducing energy use by 10% by 2022.**<sup>iv</sup> New funding investments in these areas will help Virginia catch up in these growing clean energy industries.

### Stimulate Job Growth in Southwest

Historically low natural gas prices have led to even lower levels of coal production in a region heavily dependent on it. **The Virginia Coalfield Economic Development Authority (VCEDA) created more than 1,100 new jobs and \$26 million in economic investments in 2013 while receiving less than \$10 million in new revenue.**<sup>v</sup> More funds will mean more opportunities to aid families and businesses in SW Virginia.

### Reduce Harmful Carbon Emissions

**The federal Clean Power Plan requires Virginia to cut its carbon emissions by 38% below 2012 levels by the year 2030.** By joining RGGI, Virginia can position itself to meet future pollution limits in a cost-effective way. The program encourages more efficiency from fossil-fuel plants and supports the growth of less carbon-intensive energy sources, particularly solar and wind.

## The Regional Greenhouse Gas Initiative: How It Works



RGGI is a cooperative effort of nine East Coast states from Maine to Maryland that caps and reduces carbon emissions from power plants. Under RGGI, power plants in participating states purchase allowances for every ton of carbon pollution that they emit.

RGGI states agree amongst themselves how many pollution allowances to offer for sale each year, thus setting a cap on emissions, and they gradually lower the cap each year. **It's a flexible, market-based system: once states set the carbon cap, power plants decide how to stay below it.** Revenue from the auction of pollution allowances goes back to the state to fund carbon reduction programs and other initiatives.

## The Virginia Coastal Protection Act: In Detail

The Virginia Coastal Protection Act would require Governor McAuliffe to join Virginia into the Regional Greenhouse Gas Initiative and authorize Virginia's Department of Environmental Quality to establish guidelines for Virginia's participation in RGGI by June 30, 2016.

**The act creates the Commonwealth Resilience Fund**, a dedicated source of revenue to help localities fund coastal adaptation and climate resilience efforts. The fund will hold all proceeds from RGGI auctions and will accept additional appropriations made by the General Assembly. The act specifies that the funds be appropriated in the following manner:

- Hampton Roads Coastal Adaptation Efforts – 50%
- Statewide Energy Efficiency & Clean Energy Programs – 35%
- Southwest Virginia Economic Development Assistance – 10%
- RGGI Programmatic Expenses – 5%

### RGGI = Revenue

Virginia's participation in RGGI is projected to raise **more than \$200 million per year** by 2020 in auction allowances.

### THE SOLUTION:

Virginia can generate millions of dollars annually to fight climate change impacts and protect citizens from sea level rise by joining RGGI, a regional collaboration to reduce greenhouse gas pollution. Revenue associated with the sale of pollution auction permits will fund adaptation solutions in Hampton Roads, economic development assistance in Southwest Virginia, and clean energy and efficiency programs throughout the Commonwealth.

<sup>i</sup> [http://ccrm.vims.edu/recurrent\\_flooding/Recurrent\\_Flooding\\_Study\\_web.pdf](http://ccrm.vims.edu/recurrent_flooding/Recurrent_Flooding_Study_web.pdf)

<sup>ii</sup> [http://www.washingtonpost.com/business/economy/in-norfolk-evidence-of-climate-change-is-in-the-streets-at-high-tide/2014/05/31/fe3ae860-e71f-11e3-8f90-73e071f3d637\\_story.html](http://www.washingtonpost.com/business/economy/in-norfolk-evidence-of-climate-change-is-in-the-streets-at-high-tide/2014/05/31/fe3ae860-e71f-11e3-8f90-73e071f3d637_story.html)

<sup>iii</sup> <http://www.norfolk.gov/DocumentCenter/View/16480>

<sup>iv</sup> <http://www.wiseenergyforvirginia.org/new-power/efficiency-first/>

<sup>v</sup> [http://www.vaceda.org/ckfinder/userfiles/files/AnnualReport\\_.pdf](http://www.vaceda.org/ckfinder/userfiles/files/AnnualReport_.pdf)

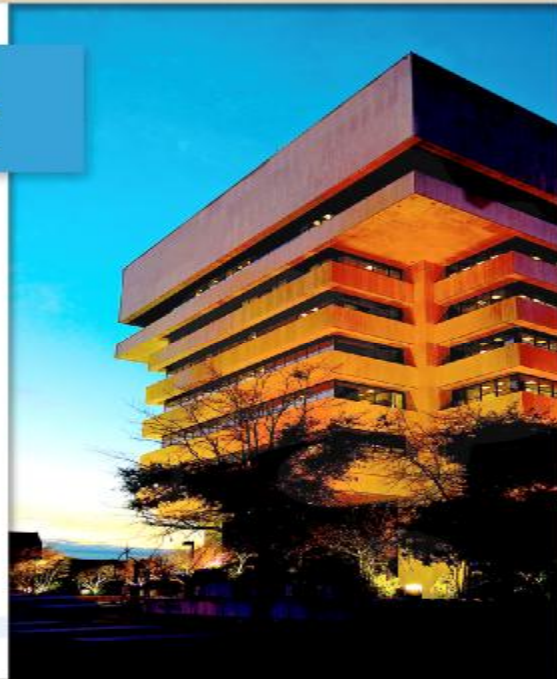


**TAKE ACTION!** If we're serious about protecting Hampton Roads from sea level rise, we must first dedicate revenue to fund adaptation. To get involved, contact: Dawone Robinson, Virginia Policy Director, at [dawone@chesapeakeclimate.org](mailto:dawone@chesapeakeclimate.org) or 804-767-8983. Learn more at [chesapeakeclimate.org/virginia/safe-coast/](http://chesapeakeclimate.org/virginia/safe-coast/)

# HAMPTON VA

## Virginia Coastal Protection Act

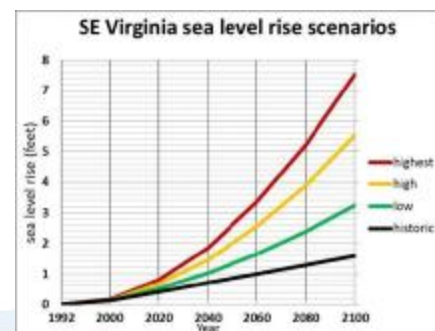
*Hampton City Council*



## Tidal Flooding is a Major Issue in Hampton Roads

- Region is facing the effects of two phenomena simultaneously
  - Sinking land (land subsidence) &
  - Rising seas
- Hampton has experienced nearly \$70 million in losses associated with flooding since 1971
  - Hampton has 936 repetitive loss properties currently, which will cost millions of dollars to address
  - Other flood mitigation projects like those identified by the Dutch Dialogs project would require substantial funding to complete
- VIMS projects that flooding in Hampton Roads will continue to worsen as a result of sea level rise

### Sea Level Rise Projections in Hampton Roads (VIMS)



## Virginia's Past & Ongoing Efforts on Sea Level Rise

- Gov. Kaine Commission on Climate Change – Study & Recommendations (2007)
- VIMS Recurrent Flooding Study for Tidewater Virginia – Study (2013)
- General Assembly Recurrent Flooding Joint Subcommittee – Study & Recommendations (2013)
- Recurrent Flooding Sub-Panel of Secure Commonwealth Panel – Sea Level Rise – Recommendations (2014)
- Gov. McAuliffe Climate Change & Resiliency Update Commission – Study & Recommendations (2014)
- Virginia Coastal Protection Act proposed by Delegate Ron Vilanueva in 2015
  - Would authorize Virginia joining 9 other states on the east coast in a “cap and trade” program called the Regional Greenhouse Gas Initiative

## Regional Greenhouse Gas Initiative (RGGI)

### Cap-and-Trade History

- 1980s: First proposed by Pres. Reagan to phase out lead gasoline
- 1989: Pres. George H.W. Bush used it to reduce sulfur dioxide emissions from power plants (Acid Rain Program)
- 2003 - Gov. Pataki (R – NY) proposed RGGI as **market-based solution** to carbon dioxide reductions
- 2005 – Pres. George W. Bush used it to further limit sulfur dioxide emissions from power plants

### Current RGGI States



### How RGGI Works

- Buy carbon allowance for every ton of CO<sub>2</sub> emitted
- RGGI sets region-wide cap; lowers it 2.5% annually
- Companies decide how to stay below cap
- Allowances sold at quarterly auction – returned to states for re-investments
- Projected roughly \$200 million in auction revenue annually through 2030 for Virginia
- Solution to EPA's Clean Power Plan



### The Virginia Coastal Protection Act – Joining RGGI & Creating the Commonwealth Resilience Fund (Villanueva/McEachin)

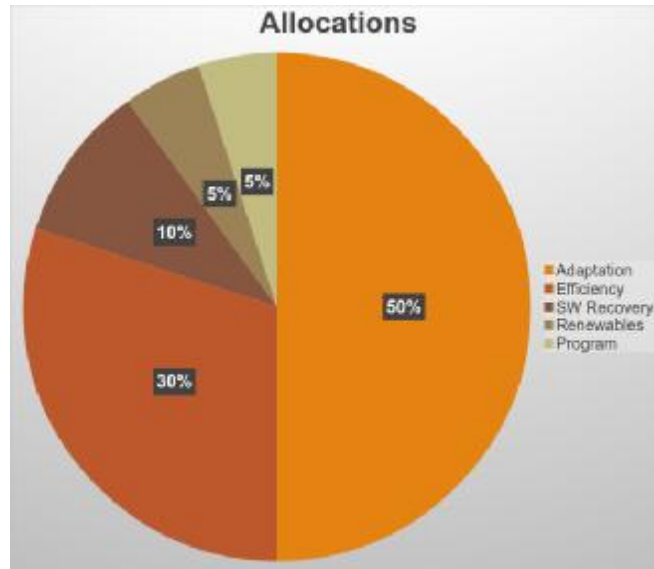
\$100 million annually for sea level rise and flooding adaptation

\$60 million annually for statewide energy efficiency programs – half to low-income residents (at no cost) and moderate-income residents

\$20 million annually for economic development in SW VA

\$10 million annually for statewide renewables

\$10 million for state programmatic expenses



## RGGI and the Clean Power Plan

- **What is the Clean Power Plan? (CPP)**
  - The EPA set targets for all states to reduce carbon dioxide emissions from power plants by 2030
- **What is the Regional Greenhouse Gas Initiative? (RGGI)**
  - RGGI is a multi-state effort to reduce CO<sub>2</sub> pollution. Under the CPP, states have the option of going it alone, or by joining a regional effort like RGGI and reduce emissions across multiple states
- **Where is Virginia now? What are our goals under the CPP?**
  - **As of 2012**, the adjusted baseline year for the CPP, **Virginia's starting point is 27,365,439 short tons of CO<sub>2</sub> emissions**. Accounting for any new demand growth and other additional increases in emissions, **Virginia must stay below an emissions goal of 27,735,010 short tons of CO<sub>2</sub> by 2030**.
- **Why RGGI to meet the CPP?**
  - The ability to trade allowances and combine emissions goals with other states creates flexibility in meeting state targets. Plus, auction revenues generated by RGGI provides key resources for states that could be used to find solutions to state priorities, like the cost of flooding in Hampton Roads

## RGGI Results

- **RGGI Works**
  - Since the program's inception in 2008, **RGGI states cut CO2 pollution nearly 3x faster** than non-RGGI states (Acadia Center – July 2015 Report)
- **RGGI Creates Jobs**
  - From 2012 – 2014, RGGI led to **\$1.3 billion in net positive economic activity** throughout the nine-state region (Analysis Group – July 2015 Report)
- **RGGI Reduces Bills**
  - From 2012 – 2014, **RGGI led to \$460 million in total consumer savings** by way of bill reductions in the nine-state region. (Analysis Group – July 2015 Report)
- **RGGI Provides Certainty**
  - **The nine RGGI states represent 25% of the U.S. population.** RGGI has operated for more than six years leading to positive results. In the age of uncertainty over the CPP, RGGI proves cutting emissions in a multi-state effort can be achieved while providing benefits for the economy and the consumer

## More on RGGI

### Common Objections

- RGGI will increase rates
- RGGI will increase bills
- RGGI will kill jobs

### The Facts

- Since 2008, electricity rates in RGGI states declined 2% while rates in rest of nation increased 13% (Acadia Center – July '15)
- Average electricity bill in RGGI states is \$108.43 vs. \$111.08 nationally and \$125.36 in Virginia (U.S. EIA)
- Since 2008, RGGI states experienced 3% more economic growth over non-RGGI states (Acadia Center – July '15); all nine states showed net job growth (Analysis Group – July '15)



## Statewide Support

- **Editorial Board Endorsements of Virginia Joining RGGI**

- Richmond Times-Dispatch (8/4/15)
- The Virginian-Pilot (2/5/15)
- The Washington Post (1/26/15 and 2/22/15)

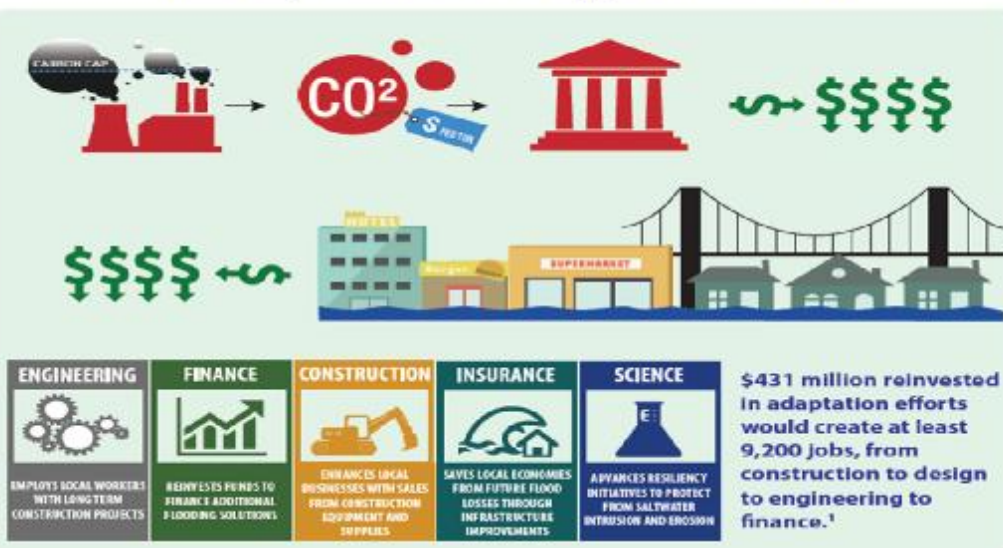
- **City Councils Passing Resolutions**

- City of Norfolk (January 2015)
- City of Charlottesville (July 2015)
- Request City of Hampton (September 2015)

*(note: while the Virginia Coastal Protection Act failed to pass the 2015 General Assembly, it remains the only solution being considered that provides the resources localities need for adequate flood protection)*

## THE POWER OF COASTAL PROTECTION

How Adaptation Funds Can Support Tidewater VA



<sup>1</sup>Source: Williams et al. "The Challenge of Mitigating Virginia's Flooding and Sea Level Rise Impacts." Wetlands Watch, November 2014.

## Questions?

The Virginia Coastal Protection Act – Commonwealth Resilience Fund



City of Hampton, VA

Agenda Review

File Number: 15-0262

22 Lincoln Street  
Hampton, VA 23669  
[www.hampton.gov](http://www.hampton.gov)

File Number: 15-0262

Request Number: R-2015-00252

File Type: Closed Session Motion

Department: Clerk of Council

Introduced: 9/9/2015

Date of Final Action:

Enactment Number:

Effective:

Status: Received By Clerk's Office

Created By: Katherine K. Glass, CMC

Phone:

Requestor: Katherine K. Glass

Phone: 757-727-6315

Presenter: N/A

Phone:

Title: Closed session pursuant to Virginia Code Section 2.2-3711.A.1 and .3 to discuss appointments as listed on the agenda and City Council appointees; to discuss or consider the acquisition of real property for a public purpose and/or the disposition of publicly held real property in the areas of Coliseum Central, Downtown Hampton, Wythe, Kecoughtan Corridor and Pembroke Avenue where discussion in an open meeting would adversely affect the bargaining position of negotiating strategy of the city council.

Action Requested: Convene closed session

Estimated Time: 5 minutes

Indicators:

Advertised:

Fiscal Notes:

Attachments:

Date

Acting Body

Action

8/31/2015

Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:



City of Hampton, VA

Agenda Review

File Number: 15-0260

22 Lincoln Street  
Hampton, VA 23669  
[www.hampton.gov](http://www.hampton.gov)

File Number: 15-0260

Request Number: R-2015-00178

File Type: Appointment

Department: Clerk of Council

Introduced: 9/9/2015

Date of Final Action:

Enactment Number:

Effective:

Status: Received By Clerk's Office

Created By: Joy Mautz

Phone:

Requestor: Joy Mautz

Phone: 757-727-6315

Presenter: N/A, N/A

Phone: N/A

Title: to consider appointments to the Purchasing and Procurement Oversight Committee

Action Requested: discuss in the afternoon, appoint in the evening

Estimated Time: 10 minutes

Indicators:

Advertised:

Fiscal Notes:

Attachments:

Date	Acting Body	Action
8/31/2015		Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:

The first full terms of Eugene Johnson, Martin Cross will conclude on June 30, 2015. They are all eligible for reappointment to a second term which will expire on June 30, 2019.

James Crocker and Lauren Yee's term will expire on June 30, 2015. They have both served two consecutive terms and are not eligible for reappointment. Council is being asked to appoint replacements for a four year term to expire on June 30, 2019.

The School Board has appointed Jason Samuels to replace William Pearson as their representative for a four year term to expire on June 30, 2019.

The committee has sent a recommendation letter which has been provided to Council.

There are individuals in the Board Bank who have expressed a desire to serve on this board. Those applications are being provided to Council.

DATE: August 24, 2015  
To: Hampton City Council  
FROM: Jessica R. Spencer, Minority Business Coordinator  
SUBJECT: Purchasing and Procurement Oversight Committee (PPOC)

The Purchasing and Procurement Oversight Committee has four members who have terms that expired on June 30, 2015. The members are Lauren Yee, James Crocker, Martin Cross, and Eugene Johnson.

The PPOC recommends that Martin Cross and Eugene Johnson be reappointed as they both have served only one term. Lauren Yee and James Crocker have served two consecutive terms and are not eligible for re-appointment.

The PPOC respectfully requests that these two vacancies be filled by Hampton business owners that will also help to maintain diversity on the committee. The two Hampton business owners are James Gervais and Tammy Waldroup. Both individuals have completed the board bank application. Highlights of their accomplishments are:

- James Gervais is owner of Graphic Memory Internet Services, Inc. Located in Downtown Hampton, Graphic Memory Internet Services has been in business since 1994. Mr. Gervais is active in the community as a volunteer with the Cub Scouts of America, and he is a member of the Hampton Rotary Club.
- Tammy Waldroup is owner of Waldroup Sommer and Associates, LLC. She also works as the Emergency Management Director for Christopher Newport University. Ms. Waldroup started her firm in 2011. She has worked as an Emergency Management Planner with the Hampton Fire Department and as a Community Facilitator in the Neighborhood Office.

Graphic Memory Internet Services, Inc. and Waldroup Sommer and Associates, LLC. are both state certified businesses, and they are listed in the City Small Business Directory.

Your consideration of the above requests is appreciated.

If you have any questions, please contact me at (757) 728-5179 or via email at [jrspencer@hampton.gov](mailto:jrspencer@hampton.gov).



City of Hampton, VA

Agenda Review

File Number: 15-0270

22 Lincoln Street  
Hampton, VA 23669  
[www.hampton.gov](http://www.hampton.gov)

File Number: 15-0270

Request Number: R-2015-00260

File Type: Appointment

Department: Clerk of Council

Introduced: 9/9/2015

Date of Final Action:

Enactment Number:

Effective:

Status: Received By Clerk's Office

Created By: Joy Mautz

Phone:

Requestor: Joy Mautz

Phone: 757-727-6315

Presenter:

Phone:

Title: to consider appointments to the Social Services Local Advisory Board

Action Requested: discuss in the afternoon, appoint in the evening

Estimated Time: 10 minutes

Indicators:

Advertised:

Fiscal Notes:

Attachments:

Date

Acting Body

Action

8/31/2015

Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:

The first full terms of Phillip Trana and Vickie Williams will expire on September 30, 2015. They are both eligible for reappointment to a second term which will expire on September 30, 2019.

The board has recommended the reappointment of Mr. Trana and Ms. Williams.

There are individuals in the Board Bank who have expressed a desire to serve on this board. Those applications are being provided to Council.



**City of Hampton, VA**

**Agenda Review**

**File Number: 15-0271**

22 Lincoln Street  
Hampton, VA 23669  
[www.hampton.gov](http://www.hampton.gov)

---

File Number: **15-0271**

Request Number: **R-2015-00261**

File Type: **Appointment**

Department: **Clerk of Council**

Introduced: **9/9/2015**

Date of Final Action:

Enactment Number:

Effective:

Status: **Received By Clerk's Office**

---

Created By: **Tamytha Lee**

Phone:

Requestor: **Tamytha Lee**

Phone: **757-727-6315**

Presenter:

Phone:

Title: **to consider appointments to the Animal Control Advisory Committee**

Action Requested: **discuss in the afternoon, appoint in the evening**

Estimated Time: **10 minutes**

Indicators:

Advertised:

Fiscal Notes:

Attachments:

---

Date	Acting Body	Action
8/31/2015		Received By Clerk's Office

---

**BRIEF BACKGROUND STATEMENT:**

The first full term of James R. Thornton will expire on August 31, 2015. He is eligible for reappointment to a second term which will expire on August 31, 2019.

There are individuals in the Board Bank who have expressed a desire to serve on this board. Those applications are being provided to Council.



**City of Hampton, VA**

**Agenda Review**

**File Number: 15-0272**

22 Lincoln Street  
Hampton, VA 23669  
[www.hampton.gov](http://www.hampton.gov)

---

File Number: **15-0272**

Request Number: **R-2015-00262**

File Type: **Appointment**

Department: **Clerk of Council**

Introduced: **9/9/2015**

Date of Final Action:

Enactment Number:

Effective:

Status: **Received By Clerk's Office**

---

Created By: **Tamytha Lee**

Phone:

Requestor: **Tamytha Lee**

Phone: **757-727-6315**

Presenter:

Phone:

Title: **to consider appointments to the Finance Committee**

Action Requested: **discuss in the afternoon, appoint in the evening**

Estimated Time: **10 minutes**

Indicators:

Advertised:

Fiscal Notes:

Attachments:

---

Date	Acting Body	Action
8/31/2015		Received By Clerk's Office

---

**BRIEF BACKGROUND STATEMENT:**

Susan Harris filled a partial term which will expire on September 30, 2015. She is eligible for reappointment to her first full term which will expire on September 30, 2019.

There are individuals in the Board Bank who have expressed a desire to serve on this board. Those applications are being provided to Council.





City of Hampton, VA

Agenda Review

File Number: 15-0274

22 Lincoln Street  
Hampton, VA 23669  
[www.hampton.gov](http://www.hampton.gov)

File Number: 15-0274

Request Number: R-2015-00265

File Type: Appointment

Department: Clerk of Council

Introduced: 9/9/2015

Date of Final Action:

Enactment Number:

Effective:

Status: Received By Clerk's Office

Created By: Joy Mautz

Phone:

Requestor: Joy Mautz

Phone: 757-727-6315

Presenter: N/A

Phone:

Title: to consider an appointment to the Peninsula Agency on Aging

Action Requested: discuss in the afternoon, appoint in the evening

Estimated Time: 10 minutes

Indicators:

Advertised:

Fiscal Notes:

Attachments:

Date	Acting Body	Action
8/31/2015		Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:

Celestine Carter's term will expire on September 30, 2015 and has asked not to be reappointed to another term. Council is being asked to appoint a replacement to serve until September 30, 2019.

The committee has submitted a recommendation letter to Council requesting the appointment of Wendell Braxton.

There are individuals in the Board Bank who have expressed a desire to serve on this board. Those applications are being provided to Council.



# Peninsula Agency On Aging, Inc.

Supporting independence and quality of life for Peninsula Seniors

739 Thimble Shoals Blvd., Suite 1006  
Newport News, VA 23606-3585  
757-873-0541 Fax 757-873-1437

HAMPTON • JAMES CITY COUNTY  
NEWPORT NEWS • POQUOSON  
WILLIAMSBURG • YORK COUNTY

August 21, 2015

The Honorable City Council  
City of Hampton  
c/o Ms. Katherine Glass, Clerk of Council  
City Hall  
22 Lincoln Street, 8<sup>th</sup> Floor  
Hampton, Virginia 23669

**RECEIVED**  
AUG 25 2015  
HAMPTON CITY COUNCIL OFF

Members of City Council:

Mrs. Celestine W. Carter has informed me she will not be available for reappointment to the PAA Board of Directors. Mrs. Carter will complete her three-year term September 30 having served as Vice Chairman for the past two years. She has been an asset to the Board and has served with distinction. She will be greatly missed.

I am therefore requesting that the Hampton City Council appoint a representative to serve a three (3) year term beginning October 1, 2015, and ending September 30, 2018. I would like to highly recommend the appoint of Wendell Braxton, 55 Bay Front Place, Hampton 23664, who has expressed his willingness to serve on the PAA Board of Directors. Your consideration and attention to this matter is greatly appreciated.

Sincerely,



William S. Massey  
Chief Executive Officer

dk

c: Wendell Braxton



Website: [www.paa-inc.org](http://www.paa-inc.org)  
Email: [information@paa-inc.org](mailto:information@paa-inc.org)





**City of Hampton, VA**

**Agenda Review**

**File Number: 15-0275**

22 Lincoln Street  
Hampton, VA 23669  
[www.hampton.gov](http://www.hampton.gov)

---

File Number: **15-0275**

Request Number: **R-2015-00267**

File Type: **Appointment**

Department: **Clerk of Council**

Introduced: **9/9/2015**

Date of Final Action:

Enactment Number:

Effective:

Status: **Received By Clerk's Office**

---

Created By: **Joy Mautz**

Phone:

Requestor: **Joy Mautz**

Phone: **757-727-6315**

Presenter: **N/A**

Phone:

Title: **to consider an appointment to the Hampton Arts Commission**

Action Requested: **discuss in the afternoon, appoint in the evening**

Estimated Time: **10 minutes**

Indicators:

Advertised:

Fiscal Notes:

Attachments:

---

Date	Acting Body	Action
8/31/2015		Received By Clerk's Office

---

**BRIEF BACKGROUND STATEMENT:**

Council is being asked to appoint Laura Fitzpatrick to the Hampton Arts Commission as the City Manager's designee for a four year term to expire on June 30, 2019.



City of Hampton, VA

Agenda Review

File Number: 15-0276

22 Lincoln Street  
Hampton, VA 23669  
[www.hampton.gov](http://www.hampton.gov)

File Number: **15-0276**

Request Number: **R-2015-00268**

File Type: **Appointment**

Department: **Clerk of Council**

Introduced: **9/9/2015**

Date of Final Action:

Enactment Number:

Effective:

Status: **Received By Clerk's Office**

Created By: **Joy Mautz**

Phone:

Requestor: **Joy Mautz**

Phone: **757-727-6315**

Presenter: **N/A**

Phone:

Title: **to consider appointments to the Board of Review of Real Estate Assessments**

Action Requested: **discuss in the afternoon, appoint in the evening**

Estimated Time: **10 minutes**

Indicators:

Advertised:

Fiscal Notes:

Attachments:

Date

Acting Body

Action

8/31/2015

Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:

Thomas Perham has served one full term which expired on June 30, 2015. He is eligible for reappointment to a second full term which will expire on June 30, 2019.

Dale Evans has served one partial term which expired on June 30, 2015. He is eligible for reappointment to a first full term which will expire on June 30, 2019.

There are individuals in the Board Bank who have expressed a desire to serve on this board. Those applications are being provided to Council.





**City of Hampton, VA**

**Agenda Review**

**File Number: 15-0263**

22 Lincoln Street  
Hampton, VA 23669  
[www.hampton.gov](http://www.hampton.gov)

---

File Number: **15-0263**

Request Number: **R-2015-00253**

File Type: **Closed Session Certification**

Department: **Clerk of Council**

Introduced: **9/9/2015**

Date of Final Action:

Enactment Number:

Effective:

Status: **Received By Clerk's Office**

---

Created By: **Katherine K. Glass, CMC**

Phone:

Requestor: **Katherine K. Glass**

Phone: **757-727-6315**

Presenter: **N/A**

Phone:

Title: **Resolution Certifying Closed Session**

Action Requested: **Adopt resolution**

Estimated Time: **5 minutes**

Indicators:

Advertised:

Fiscal Notes:

Attachments:

---

Date	Acting Body	Action
8/31/2015		Received By Clerk's Office

---

**BRIEF BACKGROUND STATEMENT:**

**LEGISLATION TEXT:**

**WHEREAS**, the City Council of the City of Hampton, Virginia, has convened a closed session on this date pursuant to an affirmative recorded vote made in accordance with the provisions of the Virginia Freedom of Information Act; and

**WHEREAS**, Section 2.2-3712D of the Code of Virginia requires a certification by the City Council of the City of Hampton, Virginia, that such closed meeting was conducted in conformity with Virginia Law;

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Hampton, Virginia, hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed session to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed, or considered by the city council of the city of Hampton, Virginia.



# City of Hampton, VA

22 Lincoln Street  
Hampton, VA 23669  
[www.hampton.gov](http://www.hampton.gov)



## Council Agenda

Wednesday, September 09, 2015

6:30 PM

Council Chambers, 8th Floor, City Hall

## City Council

*Linda Curtis, W. H. "Billy" Hobbs, Jr., Will Moffett, Teresa V. Schmidt, Chris Snead, Donnie R. Tuck, George E. Wallace, Mayor*

### **Staff:**

*Mary Bunting, City Manager*

*Vanessa T. Valdejuli, City Attorney*

*Katherine K. Glass, CMC, Clerk of Council*

Last Published: 9/4/2015 1:23:20 PM

## **WELCOME TO THE HAMPTON CITY COUNCIL MEETING**

Because of the large number of matters that need consideration, the City Council has established a meeting format and certain guidelines for citizen participation. These help ensure that everyone who wishes to speak can do so, and that the Council can benefit from hearing as many different people as possible in the shortest time. From time to time, It may be in the public's interest to change the format and guidelines, and the Council can do so at its discretion without prior notice.

### **THE ORDER OF BUSINESS**

The Council generally conducts meetings in the following order:

- (1) Call to Order
- (2) Ceremonial Matters
- (3) Consent Agenda
- (4) Regular Business Agenda
- (5) Miscellaneous New Business
- (6) Adjournment

Agenda items are taken up one at a time in the order in which they are listed. Matters on the consent agenda are routine and are adopted by one motion without separate discussion. However, items can be moved from the consent agenda to the regular agenda upon request by a citizen or a member of the Council. Keep in mind that the agenda is for the convenience of the public and the Council, and that it can be altered by the Council at any time without prior notice when the Council considers it in the public's interest to do so.

### **CITIZENS ARE INVITED TO PARTICIPATE**

The City Council has adopted a three (3) minute time limit policy for individuals desiring to address issues before this body. If you wish to address the City Council, please sign in before the meeting on the sign-up sheet located in the rear of Council Chambers. Please include your name and the subject on which you wish to speak, including the docket number if it is an item on the agenda. If you wish to address Council on a non-agenda item, the permission of Council is necessary.

If you are with a group of people, you may want to have a spokesman or two present your position to the Council and have others in agreement recognized by standing. The Council will always try to hear everyone who wishes to speak on a subject, but sometimes discussion has to be limited due to time. If the previous speaker has stated your position, you may make that known by reference (for example, "I agree with the position stated by Mr. Jones and have nothing further to add"). Repetition of positions by more than one speaker often uses more time than necessary.

Speakers are generally limited to one appearance, although Council can allow exceptions at its discretion. If possible, you should speak from prepared remarks to the subject under discussion. Irrelevant comments use others' time and your own and detract from your statements on the matter being considered.

Meetings of the Council are formal proceedings, and all comments are recorded on tape and by stenographer. For that reason, you are requested not to speak from your seat or out of turn. When you are called by the presiding officer, please follow these steps:

- (1) Come forward to the speaker's podium.
- (2) State your name and address
- (3) State your conclusion and give facts and other data to back it up.
- (4) If you represent a group or organization, ask the others to rise and be recognized.
- (5) If you have a written statement, give it and other supportive material to the Clerk for the record.

The above guidelines are intended to encourage the greatest possible participation by citizens at Council meetings. They can be modified at any time by the Council at its discretion and without prior notice.

Thank you for taking your time to participate in the Council meeting. Good government depends on the interest and involvement of you and your fellow citizens. We invite you to return.

## **CALL TO ORDER/ROLL CALL**

## **INVOCATION - Councilwoman Chris Snead**

## **PLEDGE OF ALLEGIANCE TO FLAG**

## **MAYOR'S COMMENTS**

## **CONSENT AGENDA**

### **Consent Items**

1. **15-0264** Approval of the City Council minutes from the afternoon session of August 12, 2015.
2. **15-0269** Resolution Approving the Appropriation of an Additional \$13,500.00 over a Five-Year Period, in Partnership with U.S. Geological Survey, to Operate and Receive Data from an Additional Tidal Monitoring Station at New Market Creek and W. Mercury Boulevard

## **PRESENTATIONS, PROCLAMATIONS, AWARDS**

## **PUBLIC HEARINGS**

### **Ordinances**

3. **15-0273** Ordinance to Amend and Reenact Chapter 35.1 of the City Code of the City of Hampton, Virginia by Amending: Article I Sections 35.1-3 Entitled, "Administration and Enforcement of Chapter," 35.1-4 Entitled, "Compliance with Chapter; Stop Work Orders; Penalty for Violation"; and Article III Section 35.1-49 Entitled, "Green Areas and Landscaping Requirements" Pertaining to Departmental Responsibility For Enforcing Landscaping Requirements.

### **Resolutions**

4. **15-0267** Resolution authorizing the execution of a Lease Agreement between the City of Hampton and the Commonwealth of Virginia, Department of General Services to lease the property located at 3130 Victoria Boulevard

## **GENERAL ITEMS**

**Resolutions**

5. **15-0261** Resolution Authorizing the Grant of an Encroachment, Pursuant to § 34-86 of the City Code, to Huntington Ingalls Incorporated, Newport News Shipbuilding Division for the Installation of a 2 Inch HDPE Conduit in an Area Measuring 27,000 Feet Long, of Variable Width No Greater Than 6 Feet, and At Least 36 Inches Deep, All Measurements More or Less, from Big Bethel Road, Continuing Along E. Street, and Ending at an Existing Vault on Aluminum Avenue
6. **15-0268** Resolution Authorizing the Grant of an Encroachment, Pursuant to § 34-86 of the City Code, to Hillary D. Brown, of 435 Square Feet, More or Less, Under a Portion of City-Owned Right of Way Known As E. Sherwood Avenue for Installation and Maintenance of a Water Line

**Appointments**

7. **15-0260** to consider appointments to the Purchasing and Procurement Oversight Committee
8. **15-0270** to consider appointments to the Social Services Local Advisory Board
9. **15-0271** to consider appointments to the Animal Control Advisory Committee
10. **15-0272** to consider appointments to the Finance Committee
11. **15-0274** to consider an appointment to the Peninsula Agency on Aging
12. **15-0275** to consider an appointment to the Hampton Arts Commission
13. **15-0276** to consider appointments to the Board of Review of Real Estate Assessments

**REPORTS BY CITY MANAGER, CITY COUNCIL, STAFF, COMMITTEES****MISCELLANEOUS NEW BUSINESS****PUBLIC COMMENT****ADJOURNMENT**

**Contact Info:**

**Clerk of Council, 757-727-6315, [council@hampton.gov](mailto:council@hampton.gov)**



## City of Hampton, VA

### Agenda Review

**File Number: 15-0264**

22 Lincoln Street  
Hampton, VA 23669  
[www.hampton.gov](http://www.hampton.gov)

---

File Number: **15-0264**

Request Number: **R-2015-00254**

File Type: **Minutes**

Department: **Clerk of Council**

Introduced: **9/9/2015**

Date of Final Action:

Enactment Number:

Effective:

Status: **Received By Clerk's Office**

---

Created By: **Katherine K. Glass, CMC**

Phone:

Requestor: **Katherine K. Glass**

Phone: **757-727-6315**

Presenter: **N/A**

Phone:

Title: **Approval of the City Council minutes from the afternoon session of August 12, 2015.**

Action Requested: **Approve minutes**

Estimated Time: **5 minutes**

Indicators:

Advertised:

Fiscal Notes:

Attachments:

---

Date	Acting Body	Action
8/31/2015		Received By Clerk's Office

---

BRIEF BACKGROUND STATEMENT:



**City of Hampton, VA**

**Agenda Review**

**File Number: 15-0269**

22 Lincoln Street  
Hampton, VA 23669  
[www.hampton.gov](http://www.hampton.gov)

File Number: **15-0269**

Request Number: **R-2015-00259**

File Type: **Resolution**

Department: **City Attorney**

Introduced: **9/9/2015**

Date of Final Action:

Enactment Number:

Effective: **9/9/2015**

Status: **Received By Clerk's Office**

Created By: **Christina Campana**

Phone:

Requestor: **Veronica E. Meade**

Phone: **757-727-6120**

Presenter: **Gayle Hicks, Water Resources  
Engineer of the Department of  
Public Works**

Phone: **757-727-6284**

Title: **Resolution Approving the Appropriation of an Additional \$13,500.00 over a Five-Year Period, in Partnership with U.S. Geological Survey, to Operate and Receive Data from an Additional Tidal Monitoring Station at New Market Creek and W. Mercury Boulevard**

Action Requested: **Approve Resolution**

Estimated Time: **Five Minutes**

Indicators:

Advertised:

Fiscal Notes:

Attachments: Amendment

Date  
8/31/2015

Acting Body

Action  
Received By Clerk's Office

**BRIEF BACKGROUND STATEMENT:**

In January 2015, City Council approved the appropriation of \$15,000 over a five-year period, for a partnership with U.S. Geological Survey ("USGS"), to operate and receive data from a tidal monitoring station located on the Hampton River at the Bickford Bridge on E. Pembroke Avenue (the "Project"). This Project has been expanded to include an additional tidal monitoring station at Newmarket Creek and W. Mercury Boulevard, encompassing the same timeframe from July 1, 2015 to June 30, 2020 (the "Amendment"). The Amendment increases the City's contribution from \$15,000 to \$28,500 and increases USGS's contribution from \$10,000 to \$19,000. Billing for the Amendment will be changed from annually to quarterly.

Through this collaborative effort with USGS, the City will be able to obtain additional tidal data from which to make critical decisions to protect the safety, health, and welfare of citizens during tidal flooding events. Therefore, staff recommends approval of the Amendment.

LEGISLATION TEXT:

**RESOLUTION**

**WHEREAS**, in January 2015, City Council approved the appropriation of \$15,000 over a five-year period, for a partnership with U.S. Geological Survey ("USGS"), to operate and receive data from a tidal monitoring station located on the Hampton River at the Bickford Bridge on E. Pembroke Avenue (the "Project");

**WHEREAS**, this Project has been expanded to include an additional tidal monitoring station at Newmarket Creek and W. Mercury Boulevard, encompassing the same timeframe from July 1, 2015 to June 30, 2020 (the "Amendment");

**WHEREAS**, the Amendment increases the City's contribution from \$15,000 to \$28,500 and increases USGS's contribution from \$10,000 to \$19,000;

**WHEREAS**, billing for the Amendment will be changed from annually to quarterly;

**WHEREAS**, through this collaborative effort with USGS, the City will be able to obtain additional tidal data from which to make critical decisions to protect the safety, health, and welfare of citizens during tidal flooding events;

**WHEREAS**, Council finds that execution of the Amendment of Joint Funding Agreement for Water Resources Investigations is in the best interest of the citizens of the City; and

**WHEREAS**, Council approves execution of this Amendment of Joint Funding Agreement for Water Resources Investigations with U.S. Geological Survey.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HAMPTON, VIRGINIA:**

1. That the appropriation of an additional \$13,500.00 over a five-year period pursuant to the Amendment of Joint Funding Agreement for Water Resources Investigations with U.S. Geological Survey is hereby approved; and
2. That the City Manager or her designee is hereby authorized to execute the Amendment of Joint Funding Agreement for Water Resources Investigations as set forth in this Resolution and any other documents associated with the City's partnership with U.S. Geological Survey.



UNITED STATES DEPARTMENT OF THE INTERIOR  
U. S. GEOLOGICAL SURVEY  
AMENDMENT OF JOINT FUNDING AGREEMENT  
FOR  
WATER RESOURCES INVESTIGATIONS

This amendment is for the agreement dated January 15, 2015.

1. The parties hereto agree that subject to the availability of appropriations and in accordance with their respective authorities there shall be maintained in cooperation \_\_\_\_\_  
for tidal monitoring of the Hampton River and Newmarket Creek

\_\_\_\_\_ herein called the program.

2. Paragraph 2a of the agreement is hereby X increased/ \_\_\_ decreased by \$ 9,000.00  
to read as follows:

(a) \$ 19,000.00 by the party of the first part during the period  
July 1, 2015 to June 30, 2020.

Paragraph 2b of the agreement is hereby X increased/ \_\_\_ decreased by \$ 13,500.00  
to read as follows:

(b) \$ 28,500.00 by the party of the second part during the period  
July 1, 2015 to June 30, 2020.

Billing for this agreement will be rendered quarterly. Payments of bills are due within 60 days after billing date. If not paid by the due date, interest will be charged at the current Treasury rate for each 30-day period, or portion thereof, that the payment is delayed beyond the due date. (31 USC 3717; Comptroller General File B-212222, August 23, 1983.)

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
U.S. GEOLOGICAL SURVEY

by Shaun Wicklein  
(Signature)  
Shaun Wicklein  
(Name)  
Acting Director, VA WSC  
(Title)

Date 08/13/15

City of Hampton

by \_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Name)  
\_\_\_\_\_  
(Title)

Date \_\_\_\_\_



City of Hampton, VA

Agenda Review

File Number: 15-0273

22 Lincoln Street  
Hampton, VA 23669  
[www.hampton.gov](http://www.hampton.gov)

File Number: 15-0273

Request Number: R-2015-00264

File Type: Ordinance - Non-Coded

Department: Planning

Introduced: 9/9/2015

Date of Final Action:

Enactment Number:

Effective:

Status: Received By Clerk's Office

Created By: Alison Alexander

Phone:

Requestor: Alison Alexander

Phone: 728.5238

Presenter: Steve Shapiro, Deputy Director

Phone: 727.6246

Title: Ordinance to Amend and Reenact Chapter 35.1 of the City Code of the City of Hampton, Virginia by Amending: Article I Sections 35.1-3 Entitled, "Administration and Enforcement of Chapter," 35.1-4 Entitled, "Compliance with Chapter; Stop Work Orders; Penalty for Violation"; and Article III Section 35.1-49 Entitled, "Green Areas and Landscaping Requirements" Pertaining to Departmental Responsibility For Enforcing Landscaping Requirements.

Action Requested: Approval of the ordinance.

Estimated Time: 5 minutes

Indicators:

Advertised:

Fiscal Notes:

Attachments: Redline  
PC Resolution

Date	Acting Body	Action
8/31/2015		Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:

In the past, the Department of Parks & Recreation was responsible for inspection and enforcement of landscape plans as part of the City's site plan review and approval process. Recently, departmental responsibility for this task was moved to the Department of Community Development. Accordingly, several sections of the site plan ordinance must be amended to reflect this change.

LEGISLATION TEXT:

**BE IT ORDAINED** by the Council of the City of Hampton, Virginia that Sections 35.1-3, 35.1-4(B)-(C), 35.1-49(D) of Chapter 35.1 of the City Code of the City of Hampton, Virginia, be amended and re-enacted as follows:

## **ARTICLE I. IN GENERAL**

....

### **Sec. 35.1-3. Administration and enforcement of chapter.**

Pursuant to the authority granted to the city council by the Code of Virginia § 15.2-2255, the city council designates as its agent the city manager for purposes of administering and enforcing the provisions of this chapter. The city manager authorizes and designates the director of the department of community development to act as the "city agent". Accordingly, the city agent is granted the authority to coordinate the site plan review process, to approve or disapprove site plans with the concurring approval of the director of public works or his designee and administer the provisions of this chapter that are not governed by the Zoning Ordinance, chapters 9, 13.1, 33.2 and 41.1 of the City Code or the public works design and construction standards. The city manager also designates the director of the department of public works to (i) administer and enforce the provisions of this chapter related to approval or disapproval of site plans together with the city agent;(ii) administer, review, modify and waive provisions of the City of Hampton Department of Public Works Design and Construction Standards ("public works design and construction standards") and related requirements as set forth in articles III and IV of this chapter; and (iii) enforce compliance with an approved site plan as set forth in section 35.1-4 of this chapter. Additionally, the city manager designates the director of community development to enforce compliance with the provisions pertaining to required landscape plans. Wherever the term director of community development or public works is used throughout this chapter, the term shall include their respective authorized designees.

### **Sec. 35.1-4. Compliance with chapter; stop work orders; penalty for violation.**

....

- (B) The directors of public works and community development, the building official, and the zoning administrator or their respective authorized representatives shall have the authority, pursuant to applicable ordinances and policies to enforce non-compliance with the provisions of said ordinances and policies, prosecute violations of an approved landscape plan or commencement of construction without an approved landscape plan, and to stop site construction, improvements or alterations in the event of any deviations from an approved site plan, or on the discovery of unexpected adverse impacts of the development activity on adjacent properties or public facilities.
- (C) The directors of public works or community development or their authorized representatives have the authority to serve a written notice of violation for violations of this chapter, to order the abatement of such violation, and to issue a summons to appear in the general district court to any person who shall fail to obey a lawful order contained in such notice of violation.

....

## **ARTICLE III. WORK AND DEVELOPMENT PURSUANT TO APPROVED PLAN**

....

### **Sec. 35.1-49. Green areas and landscaping requirements.**

....

- (D) Where landscaping is required, no certificate of occupancy shall be issued until the required landscaping is completed in accordance with the approved landscape plan as certified by an on-site inspection by the

department of community development. When the occupancy of a structure is desired prior to the completion of the required landscaping, a certificate of occupancy may be issued only if the owner or developer provides to the city a form of surety satisfactory to the city attorney in an amount equal to the remaining plant materials, related materials, and installation costs with the costs approved by the city agent. All required landscaping must be installed and approved within six (6) months following the issuance of the certificate of occupancy or the surety shall be forfeited to the city.

1 **Ordinance to Amend and Reenact Chapter 35.1 of the City Code of the City of Hampton,**  
2 **Virginia by Amending: Article I Sections 35.1-3 Entitled, "Administration and**  
3 **Enforcement of Chapter," 35.1-4 Entitled, "Compliance with Chapter; Stop Work Orders;**  
4 **Penalty for Violation"; and Article III Section 35.1-49 Entitled, "Green Areas and**  
5 **Landscaping Requirements" Pertaining to Departmental Responsibility For Enforcing**  
6 **Landscaping Requirements.**

7  
8 **BE IT ORDAINED** by the Council of the City of Hampton, Virginia that Sections 35.1-3, 35.1-  
9 4(B)-(C), 35.1-49(D) of Chapter 35.1 of the City Code of the City of Hampton, Virginia, be  
10 amended and re-enacted as follows:

11  
12 **ARTICLE I. IN GENERAL**

13  
14 . . . .

15  
16 **Sec. 35.1-3. Administration and enforcement of chapter.**

17  
18 Pursuant to the authority granted to the city council by the Code of Virginia § 15.2-2255,  
19 the city council designates as its agent the city manager for purposes of administering and  
20 enforcing the provisions of this chapter. The city manager authorizes and designates the  
21 director of the department of community development to act as the "city agent". Accordingly, the  
22 city agent is granted the authority to coordinate the site plan review process, to approve or  
23 disapprove site plans with the concurring approval of the director of public works or his designee  
24 and administer the provisions of this chapter that are not governed by the Zoning Ordinance,  
25 chapters 9, 13.1, 33.2 and 41.1 of the City Code or the public works design and construction  
26 standards. The city manager also designates the director of the department of public works to (i)  
27 administer and enforce the provisions of this chapter related to approval or disapproval of site  
28 plans together with the city agent;(ii) administer, review, modify and waive provisions of the City  
29 of Hampton Department of Public Works Design and Construction Standards ("public works  
30 design and construction standards") and related requirements as set forth in articles III and IV of  
31 this chapter; and (iii) enforce compliance with an approved site plan as set forth in section 35.1-  
32 4 of this chapter. Additionally, the city manager designates the director of ~~community~~  
33 ~~development parks and recreation~~ to enforce compliance with the provisions pertaining to  
34 required landscape plans. Wherever the term director of community development, ~~parks and~~  
35 ~~recreation~~ or public works is used throughout this chapter, the term shall include their respective  
36 authorized designees.

37  
38 **Sec. 35.1-4. Compliance with chapter; stop work orders; penalty for violation.**

39  
40 . . . .

- 41  
42 (B) The directors of public works and ~~community development parks and recreation~~, the  
43 building official, and the zoning administrator or their respective authorized  
44 representatives shall have the authority, pursuant to applicable ordinances and policies  
45 to enforce non-compliance with the provisions of said ordinances and policies, prosecute  
46 violations of an approved landscape plan or commencement of construction without an  
47 approved landscape plan, and to stop site construction, improvements or alterations in  
48 the event of any deviations from an approved site plan, or on the discovery of  
49 unexpected adverse impacts of the development activity on adjacent properties or public  
50 facilities.  
51

(C) The directors of public works or ~~community development parks and recreation~~ or their authorized representatives have the authority to serve a written notice of violation for violations of this chapter, to order the abatement of such violation, and to issue a summons to appear in the general district court to any person who shall fail to obey a lawful order contained in such notice of violation.

....

### ARTICLE III. WORK AND DEVELOPMENT PURSUANT TO APPROVED PLAN

....

#### Sec. 35.1-49. Green areas and landscaping requirements.

....

(D) Where landscaping is required, no certificate of occupancy shall be issued until the required landscaping is completed in accordance with the approved landscape plan as certified by an on-site inspection by the department of ~~community development parks and recreation~~. When the occupancy of a structure is desired prior to the completion of the required landscaping, a certificate of occupancy may be issued only if the owner or developer provides to the city a form of surety satisfactory to the city attorney in an amount equal to the remaining plant materials, related materials, and installation costs with the costs approved by the city agent. All required landscaping must be installed and approved within six (6) months following the issuance of the certificate of occupancy or the surety shall be forfeited to the city.

**AT A PUBLIC HEARING IN A REGULAR MEETING OF THE HAMPTON PLANNING COMMISSION HELD IN THE COUNCIL CHAMBERS, CITY HALL, HAMPTON, VIRGINIA, ON THURSDAY, AUGUST 6, 2015 AT 3:30 P.M.**

**WHEREAS:** The Hampton Planning Commission has before it this day Site Plan Ordinance Amendment 15-00001, a proposed ordinance to amend and re-enact Chapter 35.1 of the City Code of the City of Hampton, Virginia by Amending: Article I Sections 35.1-3 Entitled, "Administration and Enforcement of Chapter," 35.1-4 Entitled, "Compliance with Chapter; Stop Work Orders; Penalty for Violation"; and Article III Section 35.1-49 Entitled, "Green Areas and Landscaping Requirements" pertaining to departmental responsibility for enforcing landscaping requirements;

**WHEREAS:** In the past, the Department of Parks & Recreation was responsible for inspection and enforcement of landscape plans as part of the City's site plan review and approval process but recently, departmental responsibility for this task was moved to the Department of Community Development. Accordingly, several sections of the site plan ordinance must be amended to reflect this change; and

**WHEREAS:** there were no speakers at the public hearing.

**NOW, THEREFORE,** on a motion by Commissioner Schmidt and seconded by Commissioner Williams,

**BE IT RESOLVED** that the Hampton Planning Commission recommends to City Council approval of Site Plan Ordinance Amendment 15-00001.

A roll call vote on the motion resulted as follows:

<b>AYES:</b>	Southall, Williams, Campbell, McCloud, Schmidt
<b>NAYS:</b>	None
<b>ABST:</b>	None
<b>ABSENT:</b>	LaRue, Bunting

**A COPY; TESTE:**

  
Terry P. O'Neill  
Secretary to Commission



**City of Hampton, VA**

**Agenda Review**

**File Number: 15-0267**

22 Lincoln Street  
Hampton, VA 23669  
[www.hampton.gov](http://www.hampton.gov)

File Number: **15-0267**

Request Number: **R-2015-00257**

File Type: **Resolution**

Department: **City Attorney**

Introduced: **9/9/2015**

Date of Final Action:

Enactment Number:

Effective: **9/9/2015**

Status: **Received By Clerk's Office**

Created By: **Everett Bensten**

Phone:

Requestor:

Phone:

Presenter: **Lynn Allsbrook, Director of Public Works**

Phone: **757-727-6346**

Title: **Resolution authorizing the execution of a Lease Agreement between the City of Hampton and the Commonwealth of Virginia, Department of General Services to lease the property located at 3130 Victoria Boulevard**

Action Requested: **Hold Public Hearing and Approve Resolution**

Estimated Time: **5 minutes**

Indicators: **Not applicable**

Advertised:

Fiscal Notes:

Attachments: VDH Lease

Date	Acting Body	Action
8/31/2015		Received By Clerk's Office

**BRIEF BACKGROUND STATEMENT:**

The Commonwealth of Virginia, Department of General Services is requesting a five year lease of the property located at 3130 Victoria Boulevard which will house the Hampton office of the Virginia Department of Health. The Department of Health has occupied this space since 1981.

The attached lease agreement is for a term of five years. The annual rent for the first two years is \$111,727.00 to be paid in monthly installments of \$9,310.58 which represents \$7.00 per square foot. The annual rent for the remaining three years is \$119,708.00 to be paid in monthly installments of \$9,975.67 which represents \$7.50 per square foot.

City staff recommends approval of the Resolution.



LEGISLATION TEXT:

## Deed of Lease

This DEED OF LEASE (the "Lease") is dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the CITY OF HAMPTON, a municipal corporation of the Commonwealth of Virginia as Grantor ("Landlord"), and the COMMONWEALTH OF VIRGINIA, DEPARTMENT OF GENERAL SERVICES, as Grantee ("Tenant"), with approval of the Governor pursuant to § 2.2-1149 of the Code of Virginia (1950), as amended.

### WITNESSETH:

For and in consideration of the terms, conditions, covenants, promises and agreements herein made, Landlord leases to Tenant the following property or premises (the "Premises"), together with full rights of ingress and egress, in the City of Hampton, Virginia. The Premises are more particularly described as:

*Tax Map Parcel Number 1006423, consisting of .84 acres, more or less, known as 3130 Victoria Boulevard, Hampton, Virginia 23661, including the one-story office building thereon containing approximately 15,961 square feet (the "Building"), exclusive of the courtyard.*

A sketch of the floor plan of the Premises is attached hereto as **Exhibit A-1**. A site map is shown as **Exhibit A-2**.

1. **LANDLORD WARRANTY.** Landlord warrants that Landlord alone, at the time this Lease is executed, has the right to lease the Premises, without the consent of any other party. It is expressly understood and agreed that this covenant by Landlord constitutes a warranty. If Landlord does not have this right, then Tenant, in addition to any other remedy available at law or in equity, may immediately declare this Lease null and void from its inception and of no force and effect, without notice. In such event, no rent shall accrue or be deemed to have accrued for the term of this Lease, or for any part of the term, and Landlord shall be liable for any damages incurred by Tenant as a result of such breach.
2. **USE OF PREMISES.**
  - (a) Role of Department of General Services. The Department of General Services, through its Division of Real Estate Services, is responsible for the leasing of space for the use of agencies of the Commonwealth of Virginia. The Department, as Tenant herein, does not contemplate that it will occupy the Premises itself, but rather that the Premises will be used by one or more agencies of the Commonwealth of Virginia as designated by Tenant (herein, "Occupant")

or, collectively, "Occupants"), and that such designation may change over the Initial Term or any extension thereto. No such designation shall be deemed a subletting or assignment of this Lease and Tenant shall remain the tenant hereunder. Landlord acknowledges that no such designation or occupancy creates any contractual relationship between Landlord and an Occupant. Occupant(s) shall have the benefit of any rights of Tenant associated with this Lease. Each Occupant, with respect to its space, is authorized to deal directly with Landlord concerning routine maintenance and repairs, building access, entry of Landlord onto its Premises and similar matters; provided, however, that nothing herein prevents Tenant from dealing directly with Landlord as to any such matters. Landlord shall deal solely with Tenant as to change orders, major repairs, insurance, untenability, breaches or defaults, termination, extensions of the term (including the option terms), and additional charges imposed by Landlord (as may be authorized by this Lease or subsequent agreement of the parties). The initial Occupant is the Virginia Department of Health ("Initial Occupant").

- (b) Permitted Uses. The Premises shall be used as a medical clinic and general offices or for such purposes as the Occupant may now or hereafter be empowered or authorized by law to use same, provided that such uses are consistent with the zoning regulations and ordinances applicable to the Building. Occupancy by the Initial Occupant is hereby approved by Landlord.

3. **TERM.** The initial term of this Lease (the "Initial Term") shall be Five (5) years, beginning on October 1, 2015, (the "Commencement Date") and terminating on September 30, 2020 (the "Termination Date").

4. **RENT.**

- (a) Amount and Payment. Tenant shall pay Landlord the sum of One Hundred Eleven Thousand Seven Hundred Twenty Seven and 00/100 Dollars (\$111,727.00) as annual rent (the "Rent") for year one (1) and year two (2) of the Initial Term which shall be paid in arrears, in monthly installments of Nine Thousand Three Hundred Ten and 58/100 Dollars (\$9,310.58) and One Hundred Nineteen Thousand Seven Hundred Eight and 00/100 Dollars (\$119,708.00) as annual rent for years three (3), four (4) and five (5), which shall be paid in arrears, in monthly installments of Nine Thousand Nine Hundred Seventy Five and 67/100 Dollars (\$9,975.67). Monthly payments will be due and payable on the 10<sup>th</sup> day of the subsequent month beginning on August 10, 2015, and each month thereafter. The payment of all Rent shall be made payable to Treasurer, City of Hampton and mailed to:

City of Hampton  
Office of the Treasury  
22 Lincoln Street  
Hampton, Virginia 23669

or to such other person or entity or at such other address as Landlord may designate from time to time by written notice to Tenant.

- (b) Full Service. Except as may otherwise be specifically provided in this Lease, the Rent is based on a full service lease, including all maintenance, management fees, Landlord insurance, real estate taxes, utilities, water and sewer and janitorial expenses, with no pass-throughs.
- (c) Security Deposit. No security deposit shall be required.

**5. POSSESSION AND CONDITION OF PREMISES.**

- (a) Quiet Possession and Enjoyment. Landlord shall deliver quiet possession of the Premises to Tenant on the Commencement Date and shall provide quiet enjoyment of the Premises to Tenant during the Initial Term, and any renewals or extensions thereof.
- (b) Building and Occupancy Codes; Condition Suitable for Intended Use. On the Commencement Date, Landlord shall deliver the Premises to Tenant in good repair, in compliance with all applicable building and occupancy codes, and in a condition suitable to the use for which it is leased.
- (c) Landlord Entry. Landlord, and its employees, agents and contractors, shall have the right to enter and pass through any part of the Building, without prior notice, only in the case of an emergency and to provide routine janitorial services consistent with this Lease. If Landlord, or Landlord's employees, agents or contractors, must enter the Building in the case of an emergency, then as soon as practicable before or after such emergency entrance, Landlord, or Landlord's agent, shall contact Martin Wheeler, Business Manager (Telephone #757-315-3778). This contact person may be changed by proper notice to Landlord. Tenant may direct Landlord to give such notice to a contact person with each Occupant whose portion of the Premises has been subject to an emergency entry.
- (d) Asbestos. Landlord covenants that (i) the Building is free of friable asbestos that is not managed under a management plan prepared by an Asbestos Management Planner licensed by the Virginia Department of Professional and Occupational Regulation; and (ii) any friable asbestos discovered in or on the Building shall be promptly and properly removed by Landlord, at Landlord's sole expense, in compliance with applicable federal, state and local laws and regulations, provided that, if the asbestos was introduced into the Building by Tenant or an Occupant, the cost of the removal thereof shall be Tenant's expense.

**6. MAINTENANCE.**

- (a) Condition at Commencement Date. Landlord warrants that on the Commencement Date, the Building and all its equipment, including the plumbing, heating, ventilation and air conditioning equipment and systems: (i) shall be in good repair and good working order; and (ii) free of termite or other pest infestation and damage.
- (b) Compliance with Laws. Landlord shall equip the Building and perform all alterations, replacements, improvements, decontamination, and additions to the Building and the equipment upon the Building, at Landlord's expense, as shall be necessary at any time during the Initial Term of this Lease, or any extension or renewal thereof, to comply with the provisions of federal, State and local laws and regulations pertaining to health, safety, public welfare, and environmental protection, including laws and regulations pertaining to asbestos, carbon monoxide, polychlorinated biphenyls, urea formaldehyde, lead paint, mold, radon, petroleum product storage tanks, and freon, regardless of the effective date of law or regulation unless the Building is grandfathered from such laws or regulations. This subsection shall not apply if the necessity for compliance with these laws arises from a grossly negligent or willful act of Tenant and its employees and Tenant is found by a court of competent jurisdiction to be liable for such acts under the Virginia Tort Claims Act, or the Commonwealth's Division of Risk Management consents that Tenant is so liable.
- (c) Compliance with Technical Requirements; HVAC Specifications. It shall be the sole responsibility and obligation of Landlord, at its expense and in accordance with applicable laws, technical publications, manuals and standard procedures, to (i) properly maintain, repair and replace all the structural portions of the Building, including foundation, sub-floor, structural walls and roof, as well as to keep the Building and all equipment and non-trade fixtures (exclusive of equipment and non-trade fixtures owned by Tenant or an Occupant), in good working order and to perform any required repairs, replacement and maintenance, and (ii) keep all plumbing, heating, air conditioning, electrical and mechanical devices, appliances and equipment of every kind or nature affixed to or serving the Building in good repair, condition and working order. As used herein, the word "repair" shall be deemed to include replacement of broken or cracked glass. All equipment and systems (exclusive of equipment and systems owned by Tenant or an Occupant) shall be maintained to provide reliable, energy efficient service, without unusual interruption, disturbing noises, exposure to fire or safety hazards, uncomfortable drafts, excessive air velocities, or unusual emissions of dirt. Landlord shall cause the HVAC System to provide a temperature throughout the Building of not less than 68° F nor more than 74° F year round, during regular business hours of the Occupants, with a minimum of 20% relative humidity when heat is being provided and with a maximum of 60% relative humidity when air conditioning is being provided. Fresh air exchange rates and CO2 levels shall comply with Ventilation Standard for Virginia MEP code 62.1, 2007.

- (d) Other Maintenance. Landlord shall strip and wax the floors twice a year. All other necessary or required maintenance, repairs and replacements to the Premises, including the parking areas and landscaping (including grass cutting as needed), shall be the sole responsibility and expense of Landlord. Landlord's maintenance responsibilities shall include the supply and replacement of all supplies, materials and equipment necessary for such maintenance. Landlord shall provide janitorial services to the Building five (5) days per week, exclusive of State holidays if the Occupant(s) will not be open for business. Specifications for janitorial services are set out in **Exhibit B**. Janitorial services of a disruptive nature, such as washing/stripping/waxing floors and vacuuming, shall be performed after regular business hours.
- (e) Tenant's Negligence or Willful Acts. Landlord shall not be obligated to make any repairs to the Premises due to damage caused by the grossly negligent or willful acts of Tenant, or its agents, employees, or contractors.
- (f) Failure to Maintain. If Landlord fails to comply with any of its obligations under this Section 6, or fails to keep, repair and maintain the Building and the Premises, including all plumbing, heating, air conditioning, electrical and mechanical devices, the roofing system, and appliances and equipment of every kind or nature affixed to or serving the Building, in good repair, condition and working order as provided in this Section, then Tenant shall give written notice thereof to Landlord. If the failure has not been remedied within ten (10) days following such notice, then Tenant, at its option and with a second written notice to Landlord, may either terminate this Lease and all obligations hereunder, or proceed to make, or cause to be made, such upkeep, repair and maintenance, at Landlord's expense. Tenant may deduct the cost thus incurred in fulfilling Landlord's obligations under this Lease from future Rent payments and/or may collect the cost from Landlord in any manner provided by law. No notice of termination shall be given under this Section if Landlord has physically commenced such repairs or is causing such repairs to be made, and such repair work is being diligently and continuously pursued to completion in a good and workmanlike manner. Furthermore, if the failure has not been remedied within the time specified above, Tenant shall be entitled to deduct from the Rent, or any installment thereof, the per diem rental for each day that such failure continues beyond the specified time. The rights of Tenant set out herein shall be cumulative, and the exercise of any right shall not exclude the exercise of any other right.

In the case of any repetitive failure of Landlord to comply with its obligations to maintain any device or system, Tenant shall advise Landlord of any subsequent problem with respect to such device or system, in writing, but shall not be required to wait any additional period of time before exercising its rights under this provision.

Notwithstanding the foregoing, if any event occurs that creates an unreasonable risk of injury to person or property, Tenant is authorized to make temporary repairs to alleviate such risk, at Landlord's expense.

- (g) Snow Removal. When and as snow and/or ice removal become necessary, Landlord shall promptly remove all snow and ice from all walkways, loading areas and parking areas.
- (h) Access. Tenant and Occupants shall have access to the Building 24 hours a day, 365 days a year.

**7. DAMAGE OR DESTRUCTION OF THE PREMISES.**

- (a) Termination. If the Building is damaged by fire, lightning, windstorm, tornado, earthquake, civil disturbance, flood, acts of nature or other casualty loss, and, in the reasonable opinion of either party, it is thereby rendered substantially untenable or unusable, and cannot be reasonably commercially rebuilt within one hundred eighty (180) days following the date of casualty, this Lease shall terminate, at the option of either party, effective on the date of the casualty, upon written notice to the other party, given within thirty (30) days following the casualty.
- (b) Obligation to Repair and Restore. If neither party terminates this Lease as provided in "(a)" above, Landlord shall repair and restore the Building as promptly as possible to its former condition, but in any event within one hundred eighty (180) days following the date of casualty. There shall be a proportionate abatement of all Rent and other payments otherwise due to Landlord under the terms of this Lease, for the period during which the said repairs and restoration are being completed, for that portion of the Premises not substantially usable by Tenant during such period. Landlord shall commence to make all repairs, replacement, restoration, or renovation as required in this subsection and shall thereafter diligently pursue such repairs, replacement, restoration or renovation until completed. If Landlord shall fail to substantially complete all work within the time period herein required, then, in addition to all other rights of Tenant, Tenant may choose either option (i) or (ii) below:
  - (i) Tenant, or the appropriate Occupant if authorized by Tenant, may undertake with its own resources to repair, replace, restore or renovate the Premises and may deduct the reasonable costs of the repairs, replacement, restoration, and renovation from the Rent or other payments otherwise due to Landlord under the terms of this Lease, or any renewal or extension thereof, or Tenant may collect all such costs from Landlord in any manner provided by law, if Landlord has not paid for such repairs within thirty (30) days after receipt of billing therefor from Tenant; or



(ii) Tenant may terminate this Lease by giving fifteen (15) business days written notice to Landlord.

(c) Insufficient Funds. If Landlord is willing to repair and restore the Building and Premises, but is unable to do so in a manner that is substantially equivalent to the quality and condition of the Building and Premises prior to the casualty, then, unless Landlord and Tenant shall agree on an appropriate reduction to the Rent or other concessions, Tenant shall have the right to terminate the Lease upon written notice to Landlord. Upon the happening of a casualty for which Section 7(b) applies, Landlord shall, upon request by Tenant, provide Tenant with a copy of the as-built plans for the Building and the post-casualty constructions plans and specifications.

8. **ALTERATIONS/TENANT IMPROVEMENTS.**

(a) Tenant's Right to Make Alterations. Tenant, at its sole cost and expense, may make alterations and additions to the Premises as Tenant deems proper. Tenant, however, shall not make any structural alterations of the roof, foundation or exterior walls of the Building without the prior written consent of Landlord, unless made pursuant to § 7(b)(i). Tenant, at its sole cost and expense, may install fixtures, partitions and make such other improvements as Tenant may deem proper. The title and ownership of materials used in such alterations and additions, and all fixtures, partitions, and other improvements made and/or installed by Tenant shall remain in Tenant. Upon termination of this Lease, Tenant may, at its option, remove the fixtures, partitions and other improvements made under this Section, in which event any damage to the Premises caused by removal, other than nominal damage (such as screw holes, bracket marks, etc.) shall be repaired by Tenant at its expense. If Tenant elects not to remove any of the improvements, it shall have no further responsibility for them or their removal, and such improvements shall thereafter be the property of Landlord.

(b) Tenant Improvements. In consideration for the Rent, Landlord agrees to perform, and Tenant's obligations under this Lease are expressly conditioned upon, Landlord's performance and completion of the following work (which, together, shall be referred to herein as the "Tenant Improvements"):

- Paint entire premises
- Install 14 new light fixture covers
- Add electrical outlets in 2 clinic rooms
- Clean carpet
- Provide a key fob security system
- Install a fence down the back side of the property between the school and VDH to prevent school parking in VDH's parking lot
- Stripe parking lot
- Install lights in rear parking lot



All of the Tenant Improvements shall be completed within three months of the Commencement Date. If any of the Tenant Improvements are not completed by that date, Tenant, after written notice to Landlord of its intent to do so, may complete any of the Tenant Improvements that have not yet been performed or completed. In such event, Tenant shall provide to Landlord a copy of the invoices for such work, and thereafter shall deduct the cost from Rent payments until Tenant is reimbursed in full.

**9. UTILITIES AND SERVICES; INSURANCE; TAXES.**

- (a) Utilities and Services. Landlord shall provide, at Landlord's expense, the following utilities and services for the Premises: heating and air-conditioning as conditions require, electricity, gas, water and sewer, janitorial service and interior trash removal. Landlord shall also provide (if required in the exhibits), or permit Tenant or a telecommunications company to install, telecommunications connections from the public right of way through the Building to the Premises. If Landlord or Landlord's agent interrupts, discontinues or causes the interruption or discontinuation of any utilities or services reasonably necessary for Tenant's use and enjoyment of the Premises, in whole or in part, then Tenant, in addition to any other remedy available under the law, shall be entitled to deduct from the Rent, or other payments otherwise due to Landlord under the terms of this Lease or any renewal or extension thereof, the per diem Rent for each day that such interruption or discontinuance remains in effect. If the interruption is caused by Landlord's failure to pay the provider of the utility or service, resulting in the termination of the utility or services by such provider, then Tenant may pay directly to the provider the amount necessary to restore the utility or services, in which event Tenant shall be entitled to deduct from the Rent, or other payments otherwise due to Landlord under the terms of this Lease or any renewal or extension thereof, the amount of such payment to the provider.
- (b) Real Estate Taxes. Landlord shall be responsible for all real estate taxes or charges in lieu of taxes applicable to the Premises.
- (c) Insurance. The Lessee is a self-insured entity for general liability insurance. This is in accordance with section 15.2-1518 of the Code of Virginia, which permits local governments to self-insure its liability insurance. The Lessor agrees that this is sufficient to cover all general liability insurance requirements.

**10. INTENTIONALLY OMITTED.**

**11. ACCESSIBILITY BY PERSONS WITH DISABILITIES.**

- (a) Compliance with ADA. In addition to any other requirements or covenants in this Lease, and at all times during the Term, option and any renewal terms, Landlord covenants that, as to the Premises (including the parking facilities), it has fully complied, or will comply, to the fullest extent required by law, with:

- (i) the facilities accessibility laws, regulations and standards required by the "Americans With Disabilities Act of 1990", including Titles II and III thereof, and the regulations and standards promulgated thereunder, including the regulations promulgated by the U.S. Department of Justice (28 CFR Chapter 1, Part 36 and the Standards for Accessible Design Pt. 36, App. A-entitled "ADA Accessibility Guidelines for Buildings and Facilities"), as amended (the "ADA"), and
- (ii) the minimum requirements of the Virginia Uniform Statewide Building Code (VUSBC), Volume I-New Construction, as amended, pertaining to access by the physically handicapped and aged persons, including Chapter 11 ("Accessibility") of said VUSBC, which, in part, incorporates the regulations and referenced standards of the U.S. Department of Justice identified above.

To the extent of any conflict between the foregoing requirements, in each case the more restrictive of the two shall control. Landlord further covenants that, following the date of execution of this Lease, all alterations of the Premises, including parking facilities, shall be undertaken by Landlord in such a manner that the ADA and the regulations and standards promulgated thereunder and the VUSBC are fully complied with to the extent required by law and as herein provided.

If Tenant shall discover that an element of the Premises, or the construction or design of the Premises, or alterations thereto, are not in compliance with the requirements herein set forth, Tenant shall promptly notify Landlord (or Landlord's agent) in writing detailing both the requirement and the noted deficiency and specifying the action required to bring about compliance.

Should Landlord fail within thirty (30) calendar days following such notice to comply or to propose in writing an alternative for compliance that Tenant deems acceptable, or, alternatively, fail to convince Tenant that compliance is not required, either because such accommodation as would otherwise be required would constitute an undue hardship when measured against the financial resources of Landlord or because the facilities are nevertheless accessible and usable by individuals with disabilities, then Tenant may undertake with its own resources to accomplish the work needed to achieve such compliance and may deduct the reasonable costs of such accommodation from the rents or other sums then otherwise due Landlord under the terms of this Lease, or may terminate this Lease by giving three months' written notice to Landlord.

- (b) Tenant's Trade Fixtures. The foregoing provisions of this Section, as applied to Landlord, shall not apply to trade fixtures used or installed by Tenant or Tenant's layout of such trade fixtures.

12. **DISCLOSURES; NON-WAIVER; APPROPRIATIONS.**

- (a) Sovereign Immunity. Landlord understands and acknowledges that Tenant and Occupant(s) are agencies of the Commonwealth of Virginia and with respect to tort liability for acts or occurrences on or about the Premises, including product liability, the Commonwealth, Tenant and Occupant(s) are either (i) constitutionally immune (or partially immune) from suit, judgment or liability, (ii) insured, or (iii) covered by a financial plan of risk management that is in the nature of self-insurance, all as determined by applicable laws, government policies and practices. No provision, covenant or agreement contained in this Lease shall be deemed to be a waiver of the sovereign immunity of the Commonwealth of Virginia, Tenant or Occupant(s), from tort or other liability.
- (b) No Indemnification. Landlord understands and acknowledges that Tenant and Occupant(s) have not agreed to provide any indemnification or save harmless agreements running to Landlord.
- (c) Choice of Law. This Lease shall be governed by, and construed according to, the laws of the Commonwealth of Virginia. The parties choose the City of Richmond, Virginia, as the venue for any action instituted pursuant to the terms of this Lease.
- (d) Dissolution or Restructuring of Occupant. Notwithstanding any other provision of this Lease, if an Occupant shall cease to exist, and is not replaced by a successor entity with similar powers and purposes, or its powers and authority are limited so as to not permit the continued use of the Premises for its intended purpose and use, then Tenant shall have the right to withdraw from this Lease such portion of the Premises then occupied by such Occupant (with a corresponding reduction in the Rent). In such event, Tenant will endeavor to give as much notice as is reasonably possible of the event triggering the reduction and the anticipated date by which such Occupant will completely vacate such portion of the Premises. If the Occupant is the sole Occupant of the Premises, then upon such event this Lease shall terminate. Nevertheless, if Tenant, in its sole discretion, determines that another agency or institution of the Commonwealth has a need for the portion of the Premises used by such Occupant, Tenant may designate such other agency or institution to use that portion of the Premises.
- (e) Non-Appropriation. Agencies of the Commonwealth of Virginia cannot expend funds unless appropriated by the Virginia General Assembly and may not obligate a future session of the Virginia General Assembly. It is further understood that the Rent paid by Tenant is derived from appropriations (or federal funding) made to the individual Occupants and paid over to Tenant. Therefore, notwithstanding any provision in this Lease to the contrary, if any session of the Virginia General Assembly fails to appropriate funds for the continuance of this Lease for all Occupants (or federal funding for the continuation of this Lease is no longer available), this Lease and all obligations hereunder shall automatically terminate

upon depletion of the then currently appropriated or allocated funds; provided, however, that if there is more than one Occupant, and not all Occupants have lost funding as aforesaid, then Tenant shall have the right to delete the space occupied by such Occupant from the Premises and reduce the Rent accordingly (subject to Tenant paying the cost of constructing a new demising wall, if required, and further subject to the space deleted from the Premises being reasonably commercially leasable, either by itself or as part of adjacent available space). Nevertheless, if Tenant, in its sole discretion, determines that another agency or institution of the Commonwealth has a need for the portion of the Premises used by such Occupant, Tenant may designate such other agency or institution to use that portion of the Premises.

### 13. **REPORT OF OCCUPANCY.**

- (a) Form of Report of Occupancy. Tenant shall, within fifteen (15) days after receipt of a written request by Landlord, submit to Landlord, or its designee, a written Report of Occupancy specifying: (i) the date of possession of the Premises by Tenant and the date on which the Lease terminates, (ii) whether this Lease is in full force and effect, (iii) the annual Rent, (iv) whether there have been any modifications to the Lease, and if there have been, a description of all such modifications, and, (v) whether Tenant has knowledge of any default hereunder on the part of Landlord, or if it does have such knowledge, a description of any such default.
- (b) Effect of Report of Occupancy. The issuance of a report requested under subsection 13(a), or any errors or omissions in such report: (i) shall not operate as an estoppel against either the Commonwealth of Virginia or Tenant, (ii) shall not form or provide any basis for liability against the Commonwealth or Tenant, and (iii) shall not operate as a waiver of any rights or defenses that may be available to the Commonwealth or Tenant either at that time or in the future.

### 14. **CONDEMNATION.**

- (a) Notice. Landlord shall give prompt notice to Tenant of any discussions, offers, negotiations or proceedings with any party regarding condemnation or taking of any portion of the Premises.
- (b) Rights of Parties. If any portion of the Premises is taken by eminent domain or sold to the holder of such power pursuant to a threatened taking (exclusive of takings that, in the reasonable discretion of Tenant, do not materially adversely affect the use and enjoyment of the Premises by Tenant), this Lease shall terminate effective as of the date of the taking. The date of taking shall be the earlier of: (i) the date on which title vests in the condemning entity or (ii) the date on which the condemning entity takes possession. In the event of a taking, Tenant assigns to Landlord any rights that Tenant may have in and to any portion of a condemnation award, but such an assignment shall exclude any portion that may

be due for, or attributed to, Tenant's fixtures, moving expenses and allowances. If the taking does not materially adversely affect the use and enjoyment of the Premises by Tenant, so that this Lease is not terminated, Landlord shall promptly take such action as will minimize the effects of the taking on Tenant, and Rent shall be equitably adjusted to compensate Tenant for any adverse effect of the taking.

15. **INTENTIONALLY DELETED.**

16. **SIGNAGE.** All existing signage in use pursuant to the Prior Lease (see Section 23) is authorized hereunder.

17. **TERMINATION AND HOLDOVER.**

- (a) Termination. Unless otherwise terminated herein, Tenant may elect to terminate this Lease and vacate the Premises at the end of the Initial Term or any Option Term upon providing a minimum of six (6) months' written notice to Landlord prior to the expiration of the Initial Term or such Option Term as may be applicable, or at any time during any Renewal Term (as defined below) upon providing a minimum of six (6) months' prior written notice to Landlord.

Unless otherwise terminated herein, Landlord may elect to terminate this Lease upon the expiration of the Second Option Term or upon the expiration of any Renewal Term by providing a minimum of six (6) months' prior written notice to Tenant. Landlord may also elect to terminate this Lease upon the expiration of the Initial Term or the First Option Term, if Tenant does not exercise its option rights at such times, by providing a minimum of six (6) months' prior written notice to Tenant.

- (b) Holdover. If Tenant continues to occupy the Premises after the termination date specified in a proper notice to terminate as provided in (b) above ("Holdover"), such Holdover shall be deemed a tenancy from month-to-month upon the same terms and conditions, including any rent escalation, as existed immediately prior to the commencement of the Holdover. Either party may terminate such holdover upon providing a minimum of four (4) months' prior written notice to the other party.
- (c) Condition of Premises. At the termination of this Lease, Tenant shall peaceably deliver the Premises in the same condition as originally accepted, except for damage by accident or fire, reasonable wear and tear, and subject to any provisions herein to make repairs and restoration.

- (d) Posting of Notice. After notice of termination has been properly given by either party, Landlord may elect to post a notice that the Premises are available for lease. Landlord may show the Premises to prospective tenants only during Tenant's normal business hours, with prior notice to Tenant and in such a manner so as not to disturb Tenant's operations.

18. **NOTICES.**

- (a) To Tenant. All notices (except as provided in § 17(f)) to Tenant required or permitted under this Lease shall be given in any manner set out in subsection (c) of this Section, to Tenant addressed to:

Division of Real Estate Services  
Attn: Director  
1100 Bank St., 3rd Floor  
Richmond, VA 23219

With a copy to:

Virginia Department of Health  
Director of Office of Purchasing and General Services, 12<sup>th</sup> Floor  
109 Governor Street  
Richmond, VA 23219

- (b) To Landlord. All notices to Landlord required or permitted under this Lease (other than oral notices where permitted under this Lease) shall be given in any manner set out in subsection (c) of this Section, to Landlord addressed to:

City of Hampton  
Attn: Public Works Director  
22 Lincoln Street, 5<sup>th</sup> Floor  
Hampton, Virginia 23669

- (c) Manner of Delivery. Wherever a notice is required under this Lease, notice shall be deemed to have been duly given if in writing and either: (i) personally served; (ii) delivered by prepaid nationally recognized overnight courier service; or (iii) forwarded by Registered or Certified mail, return receipt requested, postage prepaid.
- (d) Date of Delivery. Each such notice shall be deemed to have been given to or served upon the party to which addressed on the date the same is received by the party or delivery is refused.
- (e) Change of Address. Each party to this Lease shall notify the other party of a new address at which to mail notices, which notice shall be given in the manner



provided above, and unless and until such notice of new address is given, notices to a party hereto shall be sufficient if mailed to such party's address as specified in this Section.

- (f) Alternative Methods. Where notice is sent by an alternative method, the notice shall be effective if actually received by the party, or its appointed agent, to whom the notice is addressed. Nevertheless, notice to an Occupant shall not constitute notice to Tenant (unless expressly directed by Tenant pursuant to this Section).
19. **BINDING EFFECT; AMENDMENTS.** The covenants, agreements, and rights contained in this Lease shall bind and inure to the respective heirs, personal representatives, successors and assigns of Landlord and Tenant. This Lease constitutes the entire, full and complete understanding and agreement between Landlord and Tenant, and all representations, statements, warranties, covenants, promises or agreements previously made or given by either party to the other are expressly merged into this Lease and shall be null, void and without legal effect. This Lease shall not be effective or binding unless and until signed by all parties and Tenant obtains the recommendation of the Virginia Department of General Services and the approval of the Governor of Virginia, or his designee, as required by § 2.2-1149 of the Code of Virginia (1950), as amended. No amendment or modification of any of the terms of this Lease shall be binding on Tenant unless in writing and executed by all parties to this Lease with the same formality as this Lease.
20. **DEFAULT.**
- (a) Permitted Termination. The termination of this Lease by Tenant pursuant to the provisions contained herein shall not be a default hereunder.
  - (b) Breach; Rights; No Additional Obligations. If either party shall breach any provision of this Lease, the non-breaching party shall give written notice thereof to the breaching party. The breaching party shall have thirty (30) days (which shall be extended to the extent reasonably necessary if a cure shall reasonably require more than thirty (30) days, provided the breaching party promptly commences the cure and diligently pursues completion thereof) from the receipt of the notice to cure the breach and, if not so cured, the non-breaching party may, at its option, exercise such rights as may exist at law or in equity, except that Landlord shall not take possession of the Premises by any self-help remedy. The provisions of this subsection shall not be construed as imposing any additional obligations on the non-breaching party to the extent that this Lease permits the non-breaching party to take certain actions as a result of a breach by the other party.
21. **TELECOMMUNICATIONS EQUIPMENT.** Subject to all applicable federal, state and local laws, including zoning ordinances, Tenant shall have the right to place upon the roof of the Building one antenna and/or one standard-size telecommunication dish ("Satellite Equipment") as reasonably necessary for the operations of each Occupant in

the Building. Any related telecommunications equipment that is not required to be located on the roof shall be placed within the Building. Prior to any such installation, the specifications and location of the Satellite Equipment shall be subject to Landlord's approval. Landlord may establish reasonable rules relating to the positioning of such Satellite Equipment on the roof, as well as the manner of installation thereof so as to not interfere with the structural integrity of the roof. Tenant shall be responsible to assure that the installation, maintenance, operation and removal of such Satellite Equipment complies with all laws, rules and regulations applicable thereto, and Tenant agrees to repair any damage to the Building associated with the installation, maintenance or removal of the Satellite Equipment. There shall be no additional Lease costs associated with such rooftop rights. In the event that any Satellite Equipment is not removed by Tenant within ninety (90) days after the expiration of this Lease, then Landlord, at Landlord's option, shall (a) become the rightful owner of such Satellite Equipment, and Tenant shall execute necessary documentation to evidence the conveyance of such Satellite Equipment to Landlord, or (b) Landlord shall be entitled to remove such Satellite Equipment at Tenant's sole cost and expense. To the extent any Occupant shall have a need for Satellite Equipment, Landlord will make available to Tenant a conduit from the portion of the Building occupied by such Occupant to the roof to install wiring and related equipment necessary to connect such Satellite Equipment on the roof with the occupied space. If such conduit does not exist, the cost of installation shall be reimbursed by Tenant promptly upon submission by Landlord of an invoice therefor, unless included as part of the work to be performed by Landlord pursuant to Section 8(b).

22. **PRESUMPTIONS.** No presumption shall be created in favor of or against any of the parties to this Lease with respect to the interpretation of any term or provision of this Lease due to the fact that this Lease, or any part hereof, was prepared by or on behalf of one of the parties hereto, as may be evidenced by the disclosure on the face of this Deed of Lease made pursuant to Virginia Code § 17.1-223.
23. **ASSIGNMENT.** Tenant may not assign this Lease, or sublet the Premises, without the written consent of Landlord, which consent shall not be unreasonably withheld or delayed, except that Tenant may assign this Lease to any other agency of the Commonwealth of Virginia without Landlord's consent, pursuant to the terms of Sections 2 and 12. Notwithstanding the foregoing, Tenant may permit any non-profit organization currently occupying space in the Building for the purpose of providing medical services to remain in the Building.
24. **NOVATION OF PRIOR LEASE.** The parties agree that the any prior lease shall terminate on the date on which this Lease shall commence and that the prior lease shall thereupon be of no further force or effect.
25. **INTENTIONALLY DELETED.**
25. **HEADINGS.** The heading of the sections of this Lease are inserted for convenience only and do not alter or amend the provisions that follow such headings.



26. **ADDITIONAL PROVISIONS.** This Lease is subject to the following terms, conditions, modifications, additions and/or deletions provided in the following designated attachments and exhibits, which are hereby incorporated into this Deed of Lease;

Exhibits:     A-1. Floor Plan  
                  A-2. Site Plan  
                  B. Task and Frequency List

IN WITNESS WHEREOF, the parties hereto have affixed their signatures and seals.

LANDLORD: CITY OF HAMPTON

a municipal corporation of the Commonwealth of Virginia

By: \_\_\_\_\_

Title: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_, to wit:

The foregoing Deed of Lease was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ acting in his/her capacity as \_\_\_\_\_ of \_\_\_\_\_ on its behalf. He/She is personally known to me.

My commission expires: \_\_\_\_\_

Registration No. \_\_\_\_\_

\_\_\_\_\_  
Notary Public

TENANT: COMMONWEALTH OF VIRGINIA

DEPARTMENT OF GENERAL SERVICES

By: \_\_\_\_\_

Title: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_, to wit:

The foregoing Deed of Lease was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ acting in his/her capacity as \_\_\_\_\_ of the Commonwealth of Virginia, Department of General Services, on behalf of the agency. He/She is personally known to me.

My commission expires: \_\_\_\_\_

Registration No. \_\_\_\_\_

\_\_\_\_\_

Notary Public

RECOMMEND APPROVAL:

DEPARTMENT OF GENERAL SERVICES

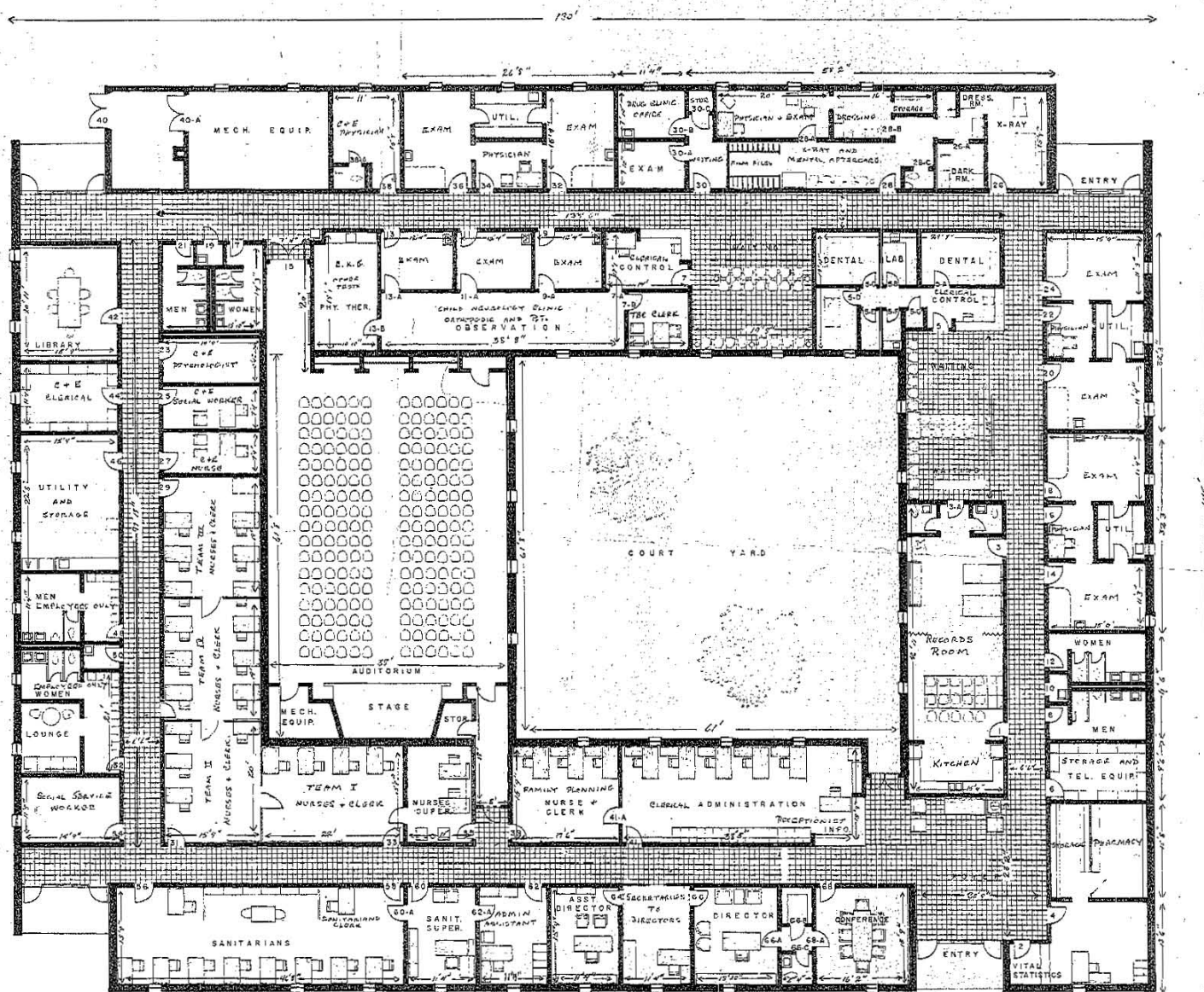
By: \_\_\_\_\_  
Director

**APPROVED BY THE GOVERNOR:**

Pursuant to § 2.2-1149 of the Code of Virginia (1950), as amended, and as the official designee of the Governor of Virginia, as authorized and designated by Executive Order 88 (01) dated December 21, 2001, I hereby approve the acquisition of the Premises pursuant to this Deed of Lease for and on behalf of the Governor of Virginia.

\_\_\_\_\_  
Secretary of Administration

\_\_\_\_\_  
Date



FLOOR PLAN  
SCALE: 1/8" = 1'-0"

PUBLIC HEALTH CENTER  
CITY OF HAMPTON, VIRGINIA  
RANCORN, WILDMAN & KRAUSE  
ARCHITECTS  
OCT. 6, 1965 63-47A

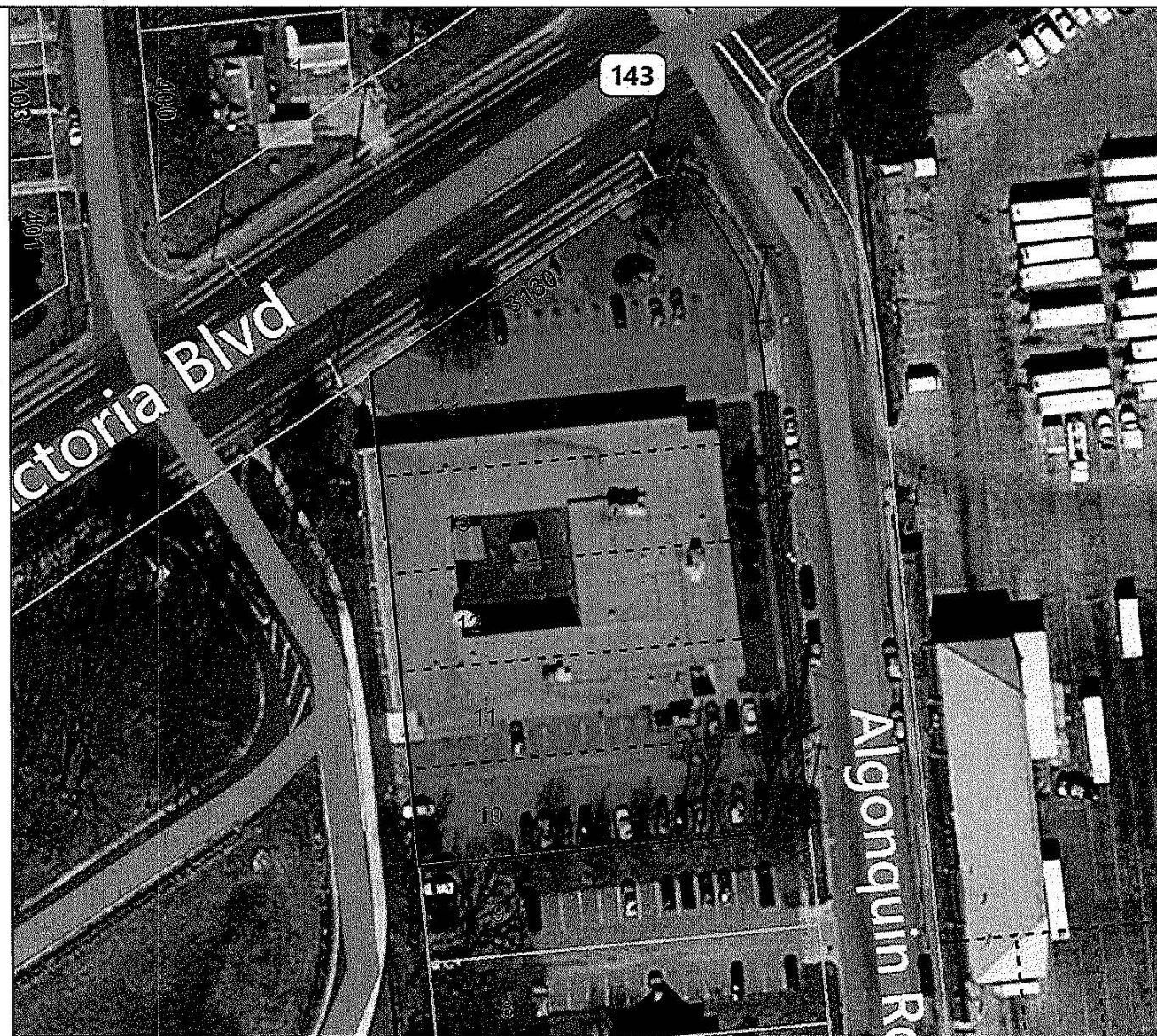
MAR. 14, 1976 REVISION

Exhibit A-1

# **Legend**

- Parcels
- Lot Lines
- Boundary

Feet  
 0 20 40 60 80  
 Map Scale: 1:1,128



**Title: Parcels**

**Date: 8/25/2015**

*DISCLAIMER: This drawing is neither a legally recorded map nor a survey and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources, and Hampton is not responsible for its accuracy or how current it may be.*

**EXHIBIT B**

**TASK AND FREQUENCY SCHEDULE**  
**Janitorial Staff**

**DAILY**

Pull all trash and properly dispose of in assigned dumpster

Vacuum all carpeted floors – high traffic areas

Sweep and/or dust mop all non-carpeted floor surface

Clean bathroom, including cleaning commodes, urinals, sinks and mirrors, and sweep and mop floor; make sure water in commode is clear

Replenish supplies in bathroom from stock on hand

Sweep all entrance mats

Clean all entrance glass, removing all visible fingerprints

Clean water fountains

Clean lounge areas

Cleaning will be accomplished prior to 8 a.m. each day

**WEEKLY**

Dust all door frames; Dust and/or wipe down all surfaces to prevent accumulation of dust and dirt

Clean tile walls and as needed

Clean bathroom partitions and doors

Dust vents

Clean trash containers

Dust all Blinds

Clean shower walls

**MONTHLY**

Do all high dusting

Scrub bathroom tile floor with portable buffer

Spot clean walls and doors

**SEMI-ANNUALLY**

Strip all flooring

Carpets cleaned



**City of Hampton, VA**

**Agenda Review**

**File Number: 15-0261**

22 Lincoln Street  
Hampton, VA 23669  
[www.hampton.gov](http://www.hampton.gov)

File Number: **15-0261**

Request Number: **R-2015-00250**

File Type: **Resolution**

Department: **City Attorney**

Introduced: **9/9/2015**

Date of Final Action:

Enactment Number:

Effective: **9/9/2015**

Status: **Received By Clerk's Office**

Created By: **Christina Campana**

Phone:

Requestor: **Veronica E. Meade**

Phone: **757-727-6120**

Presenter: **No presentation anticipated. Lynn Allsbrook will be present to address questions., Director of Public Works**

Phone: **757-727-6346**

Title: **Resolution Authorizing the Grant of an Encroachment, Pursuant to § 34-86 of the City Code, to Huntington Ingalls Incorporated, Newport News Shipbuilding Division for the Installation of a 2 Inch HDPE Conduit in an Area Measuring 27,000 Feet Long, of Variable Width No Greater Than 6 Feet, and At Least 36 Inches Deep, All Measurements More or Less, from Big Bethel Road, Continuing Along E. Street, and Ending at an Existing Vault on Aluminum Avenue**

Action Requested: **Approve Resolution**

Estimated Time: **Five Minutes**

Indicators:

Advertised:

Fiscal Notes:

Attachments: Exhibit "A"  
Encroachment Agreement

Date	Acting Body	Action
8/31/2015		Received By Clerk's Office

**BRIEF BACKGROUND STATEMENT:**

The City owns the rights of way known as Aluminum Avenue, Big Bethel Road, and E Street. Huntington Ingalls Incorporated, Newport News Shipbuilding Division ("NNSB"), with a principal place of business located at 4101 Washington Avenue, Newport News, Virginia 23607, is a military shipbuilding company that provides manufacturing, engineering, and management services to nuclear energy, oil, and gas markets;



Pursuant to § 34-86 of the City Code, NNSB requests that the City grant it permission to encroach into an area 27,000 feet long, of variable width no greater than 6 feet, and at least 36 inches deep, all measurements more or less, from Big Bethel Road, continuing along E. Street, and ending at an existing vault on Aluminum Avenue to install a 2 inch HDPE conduit for network communications between two buildings as illustrated on Exhibit A attached to the accompanying Encroachment Agreement.

Staff recommends approval under the conditions outlined in the accompanying Encroachment Agreement.

LEGISLATION TEXT:

## RESOLUTION

**WHEREAS**, the City owns the rights of way known as Aluminum Avenue, Big Bethel Road, and E Street;

**WHEREAS**, Huntington Ingalls Incorporated, Newport News Shipbuilding Division ("NNSB"), with a principal place of business located at 4101 Washington Avenue, Newport News, Virginia 23607, is a military shipbuilding company that provides manufacturing, engineering, and management services to nuclear energy, oil, and gas markets;

**WHEREAS**, NNSB requests that the City grant it permission to encroach into an area 27,000 feet long, of variable width no greater than 6 feet, and at least 36 inches deep, all measurements more or less, from Big Bethel Road, continuing along E. Street, and ending at an existing vault on Aluminum Avenue to install a 2 inch HDPE conduit for network communications between two buildings; and

**WHEREAS**, pursuant to § 34-86 of the City Code, the City agrees to grant NNSB a revocable license for the proposed encroachment under certain terms and conditions as specified in the attached Encroachment Agreement.

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Hampton, Virginia, as follows:

1. That the Encroachment Agreement between the City of Hampton and Huntington Ingalls Incorporated, Newport News Shipbuilding Division is hereby approved; and
2. That the City Manager, or her authorized designee, and Clerk of Council are hereby authorized to execute and attest the Encroachment Agreement, as set forth in this Resolution.

**Sketch Showing Encroachment Requested from Huntington Ingalls Incorporated, Newport News Shipbuilding Division for the Installation of a 2 inch HPDE Conduit Along Big Bethel Road and E Street to Aluminum Avenue**



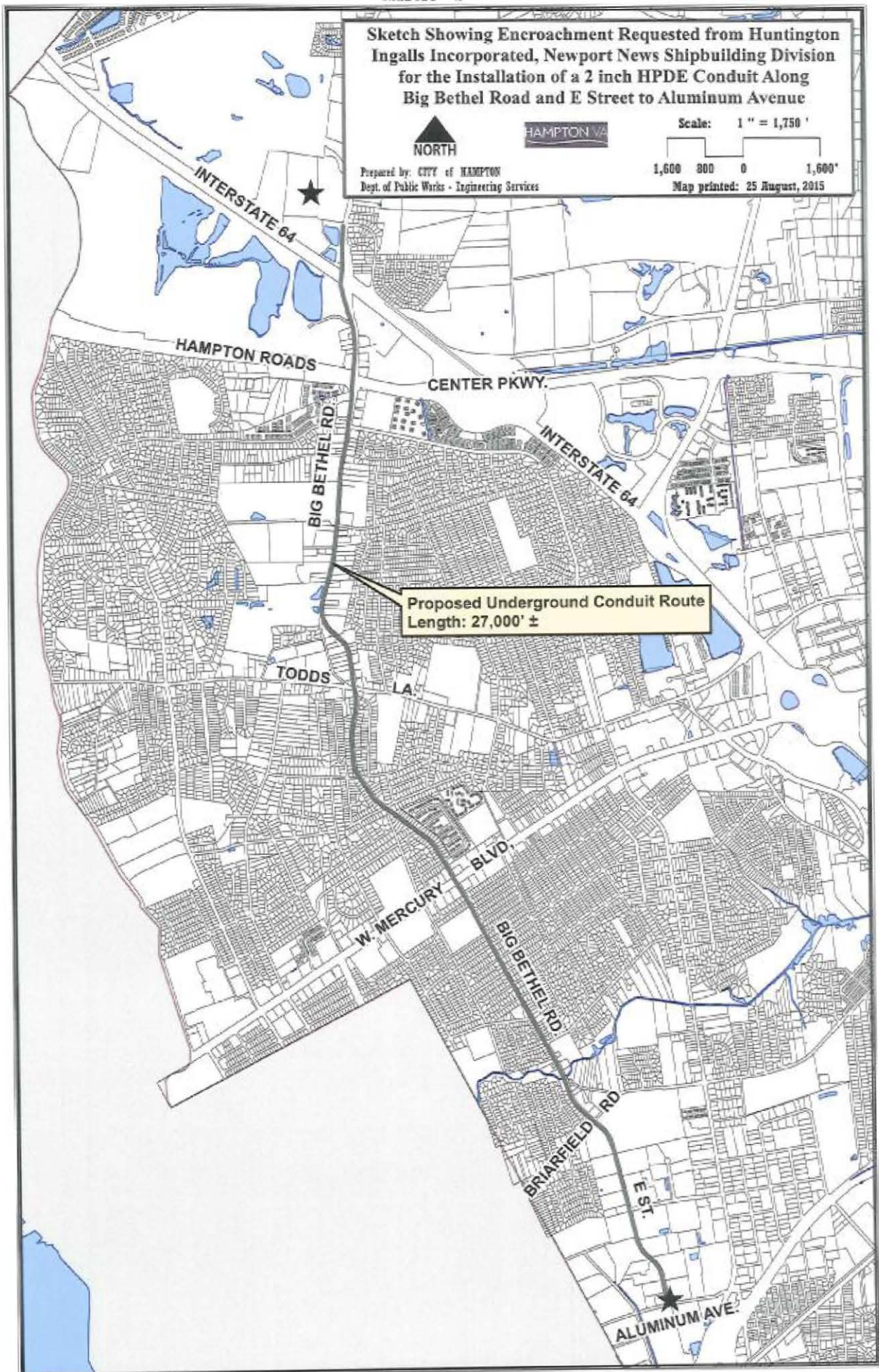
HAMPTON VA

Prepared by: CITY of HAMPTON  
Dept. of Public Works - Engineering Services

Scale: 1" = 1,750'

1,600 800 0 1,600'

Map printed: 25 August, 2015



PREPARED BY & AFTER RECORDATION RETURN TO:

Hampton City Attorney's Office  
22 Lincoln Street  
Hampton, VA 23669  
(757) 727-6127 (VEM)

Portions of: Aluminum Avenue  
Big Bethel Road  
E Street

## ENCROACHMENT AGREEMENT

**THIS ENCROACHMENT AGREEMENT** (this "Agreement") made and entered into this \_\_\_\_\_ day of September, 2015, between the CITY OF HAMPTON, VIRGINIA, a municipal corporation of the Commonwealth of Virginia located at 22 Lincoln Street, Hampton, Virginia 23669 (the "City" and "Grantor"), and HUNTINGTON INGALLS INCORPORATED, NEWPORT NEWS SHIPBUILDING DIVISION, with a principal place of business located at 4101 Washington Avenue, Newport News, Virginia 23607 ("Licensee" and "Grantee").

**WHEREAS**, the City owns the rights of way known as Aluminum Avenue, Big Bethel Road, and E Street (the "Properties");

**WHEREAS**, Licensee, with a principal place of business located at 4101 Washington Avenue, Newport News, Virginia 23607, is a military shipbuilding company that provides manufacturing, engineering, and management services to its customers ("Licensee's Parcel");

**WHEREAS**, Licensee requested that the City grant it permission to encroach into an area of 27,000 feet long, by burying a 2 inch fiber cable in an area of variable width no greater than 6 feet, and at least 36 inches deep, all measurements more or less, along and in the right of way of Big Bethel Road, continuing along E. Street, and ending at an existing vault on Aluminum Avenue as illustrated on Exhibit "A" attached hereto ("Licensed Area") to install and maintain a 2 inch HDPE conduit for network communications between two buildings controlled by Licensee (the "Licensed Improvements"); and

**WHEREAS**, pursuant to § 34-86 of the City Code, the City agrees to grant Licensee a revocable license for the proposed encroachment under certain terms and conditions as specified herein.

**NOW, THEREFORE**, in consideration of these covenants, the parties hereto agree as follows:

1. The City as "Licensor" hereby grants a non-exclusive revocable license to Licensee for the Licensed Improvements upon and under the Properties in the Licensed Area identified on the sketches designated as Exhibit "A," which is attached hereto and made a part hereof.

2. Licensee agrees to the following:

A. Licensee shall repair any damage to roads, sidewalks and brick, landscaping, or other public improvements inside or outside the Licensed Area, caused by or resulting from or arising out of any act on the part of Licensee, its subcontractors, agents, or employees under or in connection with this Agreement, or maintenance or repair of the Licensed Improvements in the Licensed Area;

B. None of the Licensed Improvements shall be placed within 2 feet of any utility infrastructure or under the paved right of way;

C. All work under this Agreement shall occur within the unpaved right of way, or Licensee shall obtain private easements;

D. Licensee shall register the Licensed Area with Ms. Utility Services, and Licensee shall register as an operator with the appropriate notification center as defined in Va. Code § 56-265.15 and shall provide proof of continued registration to the Director of Public Works on an annual basis without demand;

E. Licensee shall provide more detailed plans to the City when applying for right of way permits;

F. Licensee shall coordinate directly with the Virginia Department of Transportation when crossing the Interstate 64 right of way; and

G. Except as otherwise provided herein, Licensee shall keep the Licensed Area in a neat and clean manner, free of noxious fumes and any additional obstructions so as not to cause disruption or hazard to pedestrian or vehicular traffic on the Properties.

3. The license herein granted shall commence on September 9, 2015 and continue unless otherwise sooner terminated pursuant to this Agreement.



4. The Licensed Improvements shall remain in the same location as described herein and as shown on the attached sketches identified as Exhibit "A".

5. Licensee shall not use the Licensed Area for any purpose other than the purposes set forth in this Agreement.

6. Licensee may vacate or abandon the Licensed Area and any rights and obligations granted herein at any time upon 30 days' written notice to the City, provided, however, Licensee shall comply with any reasonable conditions imposed by the City regarding said termination, including but not limited to removal of the Licensed Improvements. The Director of Public Works specifically is delegated the responsibility to establish and enforce these conditions.

7. In the event the City reconstructs, widens, changes, or improves the areas of Big Bethel Road, continuing along E. Street, and ending at an existing vault on Aluminum Avenue, and the reconstruction, widening, changing, or improvement would necessitate the relocation of the Licensed Improvements, Licensee agrees that, upon receipt of written notice accompanied by plans for such work from the City Manager or her authorized designee, within a reasonable time and at its sole expense, Licensee shall relocate its Licensed Improvements to conform with the City's plans. The City agrees to consider granting an additional license to Licensee if deemed necessary for relocation of the Licensed Improvements.

8. It is understood and agreed that Licensee hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Licensee, its subcontractors, agents, or employees under or in connection with this Agreement or the performance or failure to perform any work required hereunder. Licensee agrees to indemnify and hold harmless the City, and its agents, volunteers, servants, employees, and officials from and against any and all claims, losses, or expenses, including reasonable attorney's fees and litigation expenses, suffered by any indemnified party or entity as a result of claims or suits, due to, arising out of, or in connection with (a) any and all such damages, real or alleged, (b) the violation of any law applicable to this Agreement, and (c) the performance of work by the Licensee or those for whom Licensee is legally liable. Upon written demand by the City, Licensee shall assume and defend at Licensee's sole expense any and all suits or defense of claims made against the City, its agents, volunteers, servants, employees, or officials.

9. Licensee acknowledges and accepts any risk of damage to the Licensed Improvements located under and along the Properties which may have been caused from the construction or maintenance activities of the City in the vicinity of the Licensed Improvements. Licensee hereby releases, acquits, and discharges the City from any liability for damage to the Licensed Improvements by the City's contractors or by franchised utility companies. Further, and without waiving the City's rights of sovereign immunity, nothing contained herein shall constitute a release of any claim or cause of action which Licensee may have resulting from damages to the Licensed Improvements which is caused by the willful, wanton, or intentional act or gross negligence of the City or its agents, volunteers, servants, employees, and officials.

10. Licensee shall maintain at its expense throughout the term of this Agreement, general liability insurance covering the Licensed Improvements in an amount of at least One Million and 00/100 Dollars (\$1,000,000.00). Such insurance shall be with a company satisfactory to the City. Any deductible provision of said insurance shall be subject to the approval of the City Attorney's office. Such insurance specifically shall insure the Licensee against all liability assumed by it under the terms of this Agreement and the license granted hereunder as well as any liability imposed by law and shall insure both the City and Licensee but shall be so endorsed as to create the same liability on the part of the insurer as if separate policies had been written for the City and Licensee. Licensee shall provide the City's Risk Management Administrator with a Certificate of Insurance naming the City as an additional insured, which shall be in a form satisfactory to the City and the City Attorney's Office. Licensee shall provide the City's Risk Management Administrator the Insurance Certificate annually without demand. Each insurer mentioned in this section shall agree by endorsement on the policy or policies issued by it or by independent instrument furnished to the City that it will give the City at least 30 days' written notice before the policy or policies in question shall be altered or cancelled.

11. Licensee may not sublet or assign the rights granted under this Agreement without the prior written consent of the City.

12. Any notice, communication, or request under this Agreement by the City or Licensee shall be sufficiently given or delivered if dispatched by either (a) certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight delivery service (next business day service), or (c) hand delivery if receipt is evidenced

by a signature of the addressee or authorized agent, and addressed to the applicable parties as follows:

As to Grantor: City of Hampton, Virginia  
Director of Public Works  
Fourth Floor  
22 Lincoln Street  
Hampton, VA 23669

Copy to: City of Hampton  
City Attorney's Office  
Eighth Floor  
22 Lincoln Street  
Hampton, VA 23669

As to Licensee: Huntington Ingalls Incorporated, Newport News  
Shipbuilding Division  
4101 Washington Avenue  
Newport News, VA 23607.

Either party may change its address for notice purposes by giving notification thereof to the other party, except that such change of address notice shall not be deemed to have been given until actually received by the addressee thereof.

13. Licensee shall pay all required sums hereunder in the amount and at the times and in the manner herein provided and shall keep and perform all terms and conditions hereof on its part to be kept and performed and at the expiration or sooner termination of this Agreement or the revocation of the license granted hereunder, peacefully and quietly surrender to the City the rights subject to the license granted hereunder. Licensee shall remove the Licensed Improvements at the written request of the City Manager to Licensee after the termination or expiration of this Agreement or the revocation of the license granted thereunder. In the event Licensee has not removed the Licensed Improvements within 30 days of receipt or deemed receipt of the City Manager's written request to remove the Licensed Improvements, the Licensed Improvements shall become the property of the City, with the City reserving the right to remove the Licensed Improvements; and the expense of said removal to be paid by Licensee which shall be collected as real estate taxes are collected if not paid by Licensee.

14. Failure of the City to take action with respect to any breach of any term, covenant, or condition herein contained shall not be deemed a waiver of such term, covenant, or condition herein contained.

15. The covenants and conditions contained herein, subject to the provisions as to assignment, transfer, or subletting, shall apply to and bind the heirs, successors, executors, administrators, and assigns of all parties hereto; and all the parties hereunder shall be jointly and separately liable hereunder.

16. The license granted hereunder is revocable by the City Council upon giving the Licensee 30 days' written notice of revocation, which right of revocation shall not be exercised unreasonably.

17. The City Council hereby delegates to the City Manager the right to revoke the license granted hereunder for violation of Paragraph No. 19 of this Agreement, subject to the terms thereof.

18. This Agreement is a Virginia contract deemed executed and accepted in the City of Hampton; and any and all questions with respect to any of the provisions herein shall be instituted, maintained, and contested in a court of competent jurisdiction in the City of Hampton, Virginia. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia.

19. In the event Licensee is for any reason or through any cause be in default under any of the terms of this Agreement, the City shall give Licensee written notice of such default by certified mail/return receipt requested, at the address set forth in Paragraph No. 12 of this Agreement. Unless otherwise provided, Licensee shall have 10 days from the date such notice is deemed given in Paragraph No. 12 above in which to cure the default, provided, however, that if it is impossible to cure such default within 10 days, the cure period provided herein shall be extended as long as Licensee is using good faith effort to effect such cure and proves such good faith effort to the satisfaction of the City. Upon Licensee's failure to cure the default, the City immediately may cancel and terminate this Agreement which operates as a revocation of the license granted thereunder as of the mailing date of the default notice. Upon termination, the Licensee shall cease performance of any further activities under the Agreement.

20. This Agreement contains the final and entire contract between the parties hereto and contains all the terms and conditions agreed upon; it being the intent of the



parties that neither shall be bound by any terms, conditions, or other representations not herein written.

**WITNESS** the following signatures and seals as of the date first written above.

**GRANTOR:**

**CITY OF HAMPTON, VIRGINIA**

By: \_\_\_\_\_  
City Manager / Authorized Designee

**COMMONWEALTH OF VIRGINIA:**  
City of Hampton, to wit:

I hereby certify on this \_\_\_\_\_ day of September, 2015, that the foregoing Encroachment Agreement was acknowledged before me by \_\_\_\_\_, City Manager or Authorized Designee for the City of Hampton, Virginia. She/He is known to me personally.

My Commission Expires: \_\_\_\_\_  
Registration No.: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**ATTEST:**

\_\_\_\_\_  
Katherine Glass, Clerk of Council

**COMMONWEALTH OF VIRGINIA**  
City of Hampton, to-wit:

I hereby certify on this \_\_\_\_\_ day of September, 2015, that the foregoing Encroachment Agreement was acknowledged before me by Katherine Glass, Clerk of Council for the City of Hampton on the City's behalf. She is known to me personally.

My Commission Expires: \_\_\_\_\_  
Registration No. \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Approved as to Form:

Approved as to Content:

By: \_\_\_\_\_  
Deputy City Attorney

By: \_\_\_\_\_  
Department of Public Works

HUNTINGTON                      INGALLS  
INCORPORATED, NEWPORT NEWS  
SHIPBUILDING DIVISION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I hereby certify on this \_\_\_\_\_ day of September, 2015, that the foregoing Encroachment Agreement was acknowledged before me by \_\_\_\_\_ (name), in his/her capacity as \_\_\_\_\_ (title) of Huntington Ingalls Incorporated, Newport News Shipbuilding Division. He/She is known to me personally or provided \_\_\_\_\_ as identification.

Notary Public

My Commission Expires: \_\_\_\_\_  
Registration No.: \_\_\_\_\_



City of Hampton, VA

Agenda Review

File Number: 15-0268

22 Lincoln Street  
Hampton, VA 23669  
[www.hampton.gov](http://www.hampton.gov)

File Number: **15-0268**

Request Number: **R-2015-00258**

File Type: **Resolution**

Department: **City Attorney**

Introduced: **9/9/2015**

Date of Final Action:

Enactment Number:

Effective: **9/9/2015**

Status: **Received By Clerk's Office**

Created By: **Christina Campana**

Phone:

Requestor: **Veronica E. Meade**

Phone: **757-727-6120**

Presenter: **No presentation anticipated. Lynn Allsbrook will be present to address questions., Director of Public Works**

Phone: **757-726-2930**

Title: **Resolution Authorizing the Grant of an Encroachment, Pursuant to § 34-86 of the City Code, to Hillary D. Brown, of 435 Square Feet, More or Less, Under a Portion of City-Owned Right of Way Known As E. Sherwood Avenue for Installation and Maintenance of a Water Line**

Action Requested: **Approve Resolution**

Estimated Time: **5 Minutes**

Indicators:

Advertised:

Fiscal Notes:

Attachments: **Encroachment Agreement**

Date	Acting Body	Action
8/31/2015		Received By Clerk's Office

**BRIEF BACKGROUND STATEMENT:**

Hillary D. Brown ("Licensee") owns a parcel of land located at 103 E. Sherwood Avenue upon which she intends to construct a single family dwelling (the "Property"). The Property is located along a dead-end private right of way, and Newport News Waterworks will not extend a water line to the Property or along the public right of way portion of E. Sherwood Avenue. Despite diligent efforts, Licensee has been unable to obtain all necessary easements to extend the water line along private property.

Therefore, Licensee has requested the City to grant permission for her to have installed and maintained a private water line along the public right of way of E. Sherwood Avenue to the intersection of Perry Street, comprising 435 square feet, more or less, as shown on Exhibit A of the Encroachment Agreement attached hereto, which is the same area to which a license was granted to the owners of 105 E. Sherwood Avenue in September 2014 for the same purpose.

Other utilities exist in the Licensed Area. Therefore, Licensee shall (i) maintain at least a 1-foot separation, but preferably 3 feet, between the Virginia Natural Gas line and the water line and (ii) include Hampton Roads Sanitation District in all plan reviews since it has infrastructure within the adjacent area. Given that this request does not adversely affect any utilities or other public purposes, City staff recommends approval of the Resolution.

LEGISLATION TEXT:

**RESOLUTION**

**WHEREAS**, Hillary D. Brown ("Licensee") owns a parcel of land located at 103 E. Sherwood Avenue upon which she intends to construct a single family dwelling (the "Property");

**WHEREAS**, the Property is located along a dead-end private right of way, and Newport News Waterworks will not extend a water line to the Property or along the public right of way portion of E. Sherwood Avenue;

**WHEREAS**, despite diligent efforts, Licensee has been unable to obtain all necessary easements to extend the water line along private property;

**WHEREAS**, Licensee has requested the City to grant permission for her to have installed and maintained a private water line along the public right of way of E. Sherwood Avenue to the intersection of Perry Street, comprising 435 square feet, more or less, as shown on Exhibit A of the Encroachment Agreement attached hereto, which is the same area to which a license was granted to the owners of 105 E. Sherwood Avenue in September 2014 for the same purpose;

**WHEREAS**, given that other utilities exist in the Licensed Area, Licensee shall (i) maintain at least a one-foot separation, but preferably 3 feet, between the Virginia Natural Gas line and the water line and (ii) include Hampton Roads Sanitation District in all plan reviews since it has infrastructure within the adjacent area;

**WHEREAS**, City Council finds this request reasonable pursuant to certain terms and conditions; and

**WHEREAS**, pursuant to § 34-86 of the City Code, the City agrees to grant Licensee a revocable license for the encroachment under a portion of E. Sherwood Avenue pursuant to the terms and conditions of the Encroachment Agreement attached hereto.

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Hampton, Virginia, as follows:

1. That the Encroachment Agreement between the City of Hampton and Hillary D. Brown is approved; and
2. That the City Manager, or her authorized designee, and Clerk of Council are authorized to execute and attest the Encroachment Agreement, as set forth in this Resolution.



PREPARED BY AND AFTER RECORDATION RETURN TO:

Hampton City Attorney's Office  
22 Lincoln Street  
Hampton, VA 23669  
(757) 727-6127 (VEM)

Consideration: \$0.00

Portion of E. Sherwood Road

## ENCROACHMENT AGREEMENT

**THIS ENCROACHMENT AGREEMENT** (this "Agreement") made and entered into this 9<sup>th</sup> day of September, 2015, among the CITY OF HAMPTON, VIRGINIA, a municipal corporation of the Commonwealth of Virginia located at 22 Lincoln Street, Hampton, Virginia 23669 (the "City" and "Grantor"), and **HILLARY D. BROWN** having a mailing address at 253 Newport News Avenue, Hampton, Virginia 23669 ("Licensee" and "Grantee").

**WHEREAS**, Licensee owns a parcel of land located at 103 E. Sherwood Avenue upon which she intends to construct a single family dwelling (the "Property");

**WHEREAS**, the Property is located along a dead-end private right of way, and Newport News Waterworks will not extend a water line to the Property or along the public right of way portion of E. Sherwood Avenue;

**WHEREAS**, despite diligent efforts, Licensee has been unable to obtain all necessary easements to extend the water line along private property;

**WHEREAS**, Licensee desires to run a water line along the public right of way of E. Sherwood Avenue to the intersection of Perry Street, 87 feet long, 5 feet wide, and 24 inches deep, comprising 435 square feet, more or less (the "Licensed Improvements") as shown on Exhibit A attached hereto (the "Licensed Area"), which is the same area to which a license was granted to the owners of 105 E. Sherwood Avenue in September 2014 for the same purpose; and

**WHEREAS**, Licensee has requested the Grantor grant permission for her to have installed and maintained a private water line along a portion of the public right of way known as E Sherwood Avenue, comprising 435 square feet, more or less, as outlined herein; and pursuant to § 34-86 of the City Code, Grantor agrees to grant a license to Licensee for the Licensed Area under the surface of E. Sherwood Avenue to install and maintain a private water line under the terms and conditions specified herein.

**NOW, THEREFORE**, in consideration of these covenants, the parties hereto agree as follows:

1. The City as "Licensor" hereby grants a non-exclusive revocable license to Licensee for the Licensed Improvements upon, onto, and under a portion of E. Sherwood Avenue in the Licensed Area identified on the plat designated as Exhibit "A," which is attached hereto and made a part hereof.

2. Licensee agrees to the following:

A. Licensee shall repair all damage to any public improvements inside or outside the Licensed Area caused by, resulting from, or arising out of any act on the part of Licensee, its subcontractors, agents, or employees under or in connection with this Agreement or maintenance or repair of the Licensed Improvements in the Licensed Area;

B. Licensee may replace the Licensed Improvements; however, any replacements must be installed in the same footprint, or as closely as reasonably practicable, as those currently existing;

C. Other than as otherwise granted herein, Licensee shall keep the Licensed Area free of noxious fumes, any additional obstructions, and unscreened debris so as not to cause disruption to pedestrian and vehicular traffic on E. Sherwood Avenue;

D. Licensee shall maintain at least a one-foot separation, but preferably 3 feet, between the Virginia Natural Gas line and the water line; and

E. Having infrastructure within the adjacent area, Hampton Roads Sanitation District shall be included in all plan reviews.

3. The license herein granted shall commence on September 9, 2015 and continue unless otherwise sooner terminated pursuant to this Agreement.

4. Except as provided in Paragraph 2(B) herein, the Licensed Improvements shall remain in the same location as shown on the attached drawings identified as Exhibit "A".

5. Licensee shall not use the Licensed Area for any purpose other than the purposes set forth in this Agreement.



6. Licensee may vacate or abandon the Licensed Improvements and terminate this Agreement and any rights and obligations granted herein at any time upon 30 days' written notice to the City, provided, however, Licensee shall comply with all reasonable conditions imposed by the City regarding said termination, including but not limited to removal of the Licensed Improvements. The Director of Public Works specifically is delegated the responsibility to establish and enforce these conditions.

7. In the event the City reconstructs, widens, changes, or improves E. Sherwood Avenue and the reconstruction, widening, changing, or improvement would necessitate the relocation of the Licensed Improvements, Licensee agrees that, upon receipt of written notice accompanied by plans for such work from the City Manager or her authorized designee, within a reasonable time and at its sole expense, Licensee shall relocate its Licensed Improvements to conform with the City's plans. The City agrees to consider granting an additional license to Licensee if deemed necessary for relocation of the Licensed Improvements.

8. It is understood and agreed that Licensee hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Licensee, its subcontractors, agents, or employees under or in connection with this Agreement or the performance or failure to perform any work required hereunder. Licensee agrees to indemnify and hold harmless the City, and its agents, volunteers, servants, employees, and officials from and against any and all claims, losses, or expenses, including reasonable attorney's fees and litigation expenses, suffered by any indemnified party or entity as a result of claims or suits, due to, arising out of, or in connection with (a) any and all such damages, real or alleged, (b) the violation of any law applicable to this Agreement, and (c) the performance of work by Licensee or those for whom Licensee is legally liable. Upon written demand by the City, Licensee shall assume and defend at Licensee's sole expense any and all suits or defense of claims made against the City, its agents, volunteers, servants, employees, or officials.

9. Licensee acknowledges and accepts any risk of damage to the Licensed Improvements located upon, onto, or under E. Sherwood Avenue which may have been caused from the construction or maintenance activities of the City in the vicinity of the Licensed Improvements. Licensee hereby releases, acquits, and discharges the City from any liability for damage to the Licensed Improvements by the City's contractors or by franchised utility companies, provided, however, that nothing contained herein shall constitute a release of any cause of action that Licensee may have against the City's



contractors or any franchise utility companies resulting from damage to the Licensed Improvements. Further, and without waiving the City's rights of sovereign immunity, nothing contained herein shall constitute a release of any claim or cause of action which Licensee may have resulting from damages to the Licensed Improvements which is caused by the willful, wanton, or intentional act or gross negligence of the City or its agents, volunteers, servants, employees, and officials.

10. Licensee shall maintain at its expense in effect throughout the term of this Agreement, general liability insurance covering the Licensed Improvements in an amount at least equal to current liability coverage on the Property. Such insurance shall be with a company satisfactory to the City. Any deductible provision of said insurance shall be subject to the approval of the City Attorney's office. Such insurance shall specifically insure the Licensee against all liability assumed by it under the terms of this Agreement and the license granted hereunder as well as any liability imposed by law and shall insure both the City and Licensee but shall be so endorsed as to create the same liability on the part of the insurer as if separate policies had been written for the City and Licensee. Licensee shall provide the City's Risk Management Administrator with a Certificate of Insurance naming the City as an additional insured, which shall be in a form satisfactory to the City and the City Attorney's Office. Licensee shall provide the City's Risk Management Administrator the Certificate of Insurance annually without demand. Each insurer mentioned in this section shall agree by endorsement on the policy or policies issued by it or by independent instrument furnished to the City that it will give the City at least 30 days' written notice before the policy or policies in question shall be altered or cancelled.

11. Licensee may not sublet or assign the rights granted under this Agreement without the prior written consent of the City.

12. A notice, communication, or request under this Agreement by the City or Licensee shall be sufficiently given or delivered if dispatched by either (a) certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight delivery service (next business day service), or (c) hand-delivery if receipt is evidenced by a signature of the addressee or authorized agent, and addressed to the applicable parties as follows:

As to Grantor:

City of Hampton, Virginia  
Director of Public Works  
Fourth Floor  
22 Lincoln Street  
Hampton, VA 23669

Copy to: City of Hampton  
City Attorney's Office  
Eighth Floor  
22 Lincoln Street  
Hampton, VA 23669

As to Licensee: Hillary D. Brown  
253 Newport News Avenue  
Hampton, VA 23669

Either party may change its address for notice purposes by giving notice thereof to the other party, except that such change of address notice shall not be deemed to have been given until actually received by the addressee thereof.

13. Licensee shall pay all required sums hereunder in the amount and at the times and in the manner herein provided and shall keep and perform all terms and conditions hereof on its part to be kept and performed and at the expiration or sooner termination of this Agreement or the revocation of the license granted hereunder, peacefully and quietly surrender to the City the rights subject to the license granted hereunder. Licensee shall remove the Licensed Improvements at the written request of the City Manager to Licensee after the termination or expiration of this Agreement or the revocation of the license granted thereunder. In the event Licensee has not removed the Licensed Improvements within 30 days of receipt or deemed receipt of the City Manager's written request to remove the Licensed Improvements, the Licensed Improvements shall become the property of the City, with the City reserving the right to remove the Licensed Improvements; and the expense of said removal to be paid by Licensee which shall be collected as real estate taxes are collected if not paid by Licensee.

14. Failure of the City to take action with respect to any breach of any term, covenant, or condition herein contained shall not be deemed a waiver of such term, covenant, or condition herein contained.

15. The covenants and conditions contained herein, subject to the provisions as to assignment, transfer, or subletting, shall apply to and bind the heirs, successors, executors, administrators, and assigns of all parties hereto; and all the parties hereunder shall be jointly and separately liable hereunder.

16. The license granted hereunder is revocable by the City Council upon giving the Licensee 30 days' written notice of revocation, which right of revocation shall not be exercised unreasonably.

17. The City Council hereby delegates to the City Manager the right to revoke the license granted hereunder for violation of Paragraph No. 19 of this Agreement subject to the terms thereof.

18. This Agreement is a Virginia contract deemed executed and accepted in the City of Hampton; and any and all questions with respect to any of the provisions herein shall be instituted, maintained, and contested in a court of competent jurisdiction in the City of Hampton, Virginia. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia.

19. In the event Licensee is for any reason or through any cause be in default under any of the terms of this Agreement, the City shall give Licensee written notice of such default by certified mail/return receipt requested, at the address set forth in Paragraph No. 12 of this Agreement. Unless otherwise provided, Licensee shall have 10 days from the date such notice is deemed given in Paragraph No. 12 above in which to cure the default, provided, however, that if it is impossible to cure such default within 10 days, the cure period provided herein shall be extended as long as Licensee is exercising good-faith effort to effect such cure and proves such good-faith effort to the satisfaction of the City. Upon failure of the Licensee to cure the default, the City may immediately cancel and terminate this Agreement which operates as a revocation of the license granted thereunder as of the mailing date of the default notice. Upon termination, the Licensee shall cease performance of any further activities under this Agreement.

20. This Agreement contains the final and entire agreement between the parties hereto and contains all the terms and conditions agreed upon, it being the intent of the parties that neither shall be bound by any terms, conditions, or other representations not herein written.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

**WITNESS** the following signatures and seals as of the date first written above.

**GRANTOR:**

**CITY OF HAMPTON, VIRGINIA**

By: \_\_\_\_\_  
City Manager / Authorized Designee

**ATTEST:**

\_\_\_\_\_  
Katherine Glass, Clerk of Council

Approved as to Form:

Approved as to Content:

By: \_\_\_\_\_  
Deputy City Attorney

By: \_\_\_\_\_  
Department of Public Works

**LICENSEE:**

By: Hillary D. Brown  
Hillary D. Brown

**COMMONWEALTH OF VIRGINIA:**  
City of Hampton, to wit:

I hereby certify on this 12<sup>th</sup> day of August, 2015, that the foregoing Encroachment Agreement was acknowledged before me by Hillary D. Brown. She is known to me personally or provided Driver license as identification.

Jessica Lee

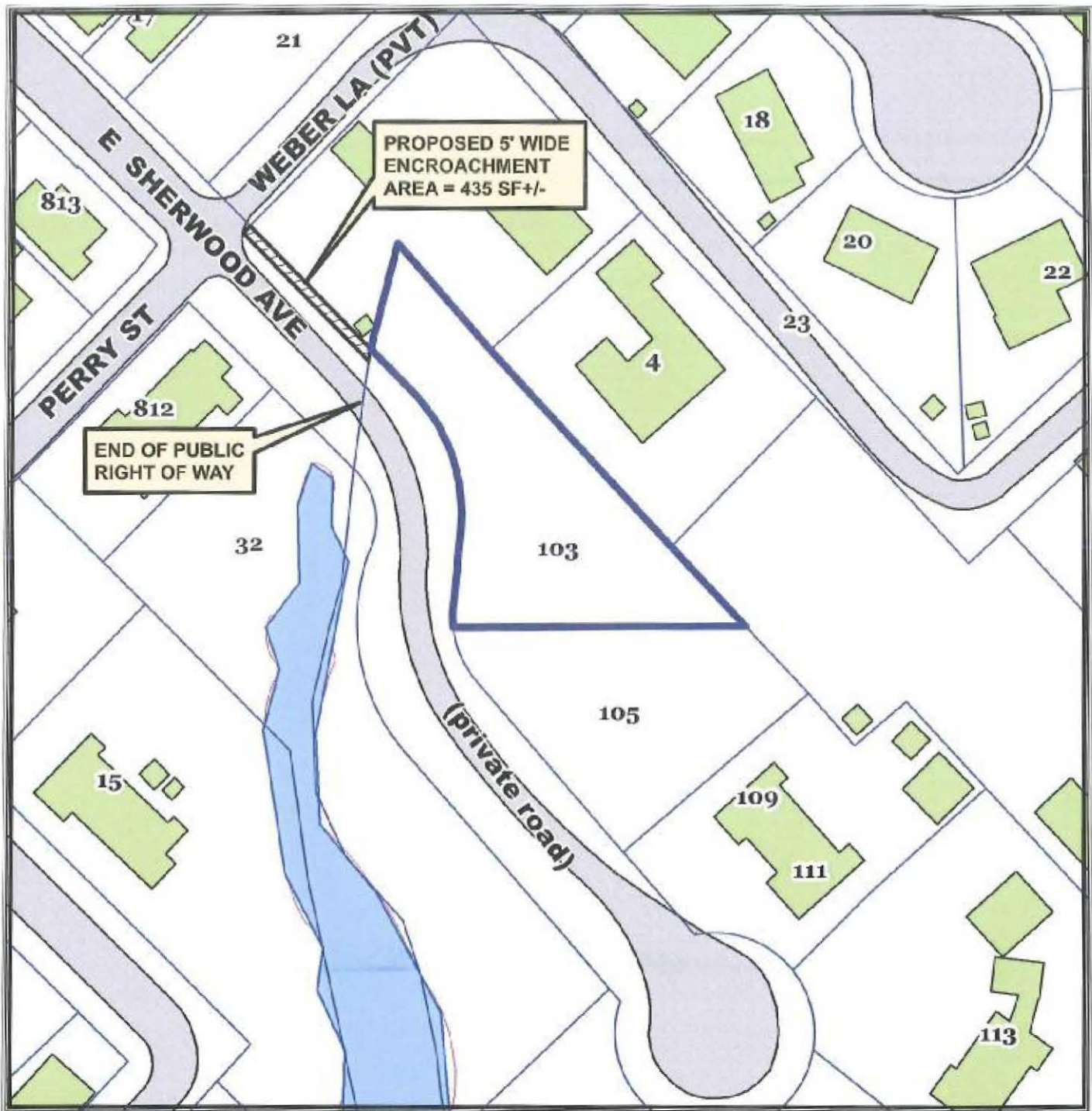
Notary Public

My Commission Expires: 06/30/17

Notary Registration No.: 7123945

JESSICA LEE  
NOTARY PUBLIC  
COMMONWEALTH OF VIRGINIA  
MY COMM EXP. 06/30/2017  
Notary Reg. Number 7123945

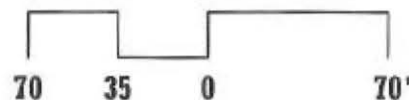




**Proposed 5' Wide Encroachment  
within E. Sherwood Ave for the  
Benefit of #103 E. Sherwood Ave.**

Prepared by: CITY of HAMPTON  
Dept. of Public Works - Engineering Services

Scale: 1" = 70'



Map printed: 25 August, 2015



HAMPTON VA

**DISCLAIMER** Although the information contained herein is believed to be reliable, no warranty, expressed or implied, is made regarding the accuracy, completeness, legality, reliability, or usefulness of any information, either isolated or in the aggregate, unless expressly specified. Neither is this information intended as a substitute for applicants' obligation to retain its own independent professional advice from an engineer, surveyor, attorney, or the like.



City of Hampton, VA

Agenda Review

File Number: 15-0260

22 Lincoln Street  
Hampton, VA 23669  
[www.hampton.gov](http://www.hampton.gov)

File Number: 15-0260

Request Number: R-2015-00178

File Type: Appointment

Department: Clerk of Council

Introduced: 9/9/2015

Date of Final Action:

Enactment Number:

Effective:

Status: Received By Clerk's Office

Created By: Joy Mautz

Phone:

Requestor: Joy Mautz

Phone: 757-727-6315

Presenter: N/A, N/A

Phone: N/A

Title: to consider appointments to the Purchasing and Procurement Oversight Committee

Action Requested: discuss in the afternoon, appoint in the evening

Estimated Time: 10 minutes

Indicators:

Advertised:

Fiscal Notes:

Attachments:

Date	Acting Body	Action
8/31/2015		Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:

The first full terms of Eugene Johnson, Martin Cross will conclude on June 30, 2015. They are all eligible for reappointment to a second term which will expire on June 30, 2019.

James Crocker and Lauren Yee's term will expire on June 30, 2015. They have both served two consecutive terms and are not eligible for reappointment. Council is being asked to appoint replacements for a four year term to expire on June 30, 2019.

The School Board has appointed Jason Samuels to replace William Pearson as their representative for a four year term to expire on June 30, 2019.

The committee has sent a recommendation letter which has been provided to Council.

There are individuals in the Board Bank who have expressed a desire to serve on this board. Those applications are being provided to Council.



City of Hampton, VA

Agenda Review

File Number: 15-0270

22 Lincoln Street  
Hampton, VA 23669  
[www.hampton.gov](http://www.hampton.gov)

File Number: 15-0270

Request Number: R-2015-00260

File Type: Appointment

Department: Clerk of Council

Introduced: 9/9/2015

Date of Final Action:

Enactment Number:

Effective:

Status: Received By Clerk's Office

Created By: Joy Mautz

Phone:

Requestor: Joy Mautz

Phone: 757-727-6315

Presenter:

Phone:

Title: to consider appointments to the Social Services Local Advisory Board

Action Requested: discuss in the afternoon, appoint in the evening

Estimated Time: 10 minutes

Indicators:

Advertised:

Fiscal Notes:

Attachments:

Date

Acting Body

Action

8/31/2015

Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:

The first full terms of Phillip Trana and Vickie Williams will expire on September 30, 2015. They are both eligible for reappointment to a second term which will expire on September 30, 2019.

The board has recommended the reappointment of Mr. Trana and Ms. Williams.

There are individuals in the Board Bank who have expressed a desire to serve on this board. Those applications are being provided to Council.





**City of Hampton, VA**

**Agenda Review**

**File Number: 15-0271**

22 Lincoln Street  
Hampton, VA 23669  
[www.hampton.gov](http://www.hampton.gov)

---

File Number: **15-0271**

Request Number: **R-2015-00261**

File Type: **Appointment**

Department: **Clerk of Council**

Introduced: **9/9/2015**

Date of Final Action:

Enactment Number:

Effective:

Status: **Received By Clerk's Office**

---

Created By: **Tamytha Lee**

Phone:

Requestor: **Tamytha Lee**

Phone: **757-727-6315**

Presenter:

Phone:

Title: **to consider appointments to the Animal Control Advisory Committee**

Action Requested: **discuss in the afternoon, appoint in the evening**

Estimated Time: **10 minutes**

Indicators:

Advertised:

Fiscal Notes:

Attachments:

---

Date	Acting Body	Action
8/31/2015		Received By Clerk's Office

---

**BRIEF BACKGROUND STATEMENT:**

The first full term of James R. Thornton will expire on August 31, 2015. He is eligible for reappointment to a second term which will expire on August 31, 2019.

There are individuals in the Board Bank who have expressed a desire to serve on this board. Those applications are being provided to Council.



City of Hampton, VA

Agenda Review

File Number: 15-0272

22 Lincoln Street  
Hampton, VA 23669  
[www.hampton.gov](http://www.hampton.gov)

File Number: **15-0272**

Request Number: **R-2015-00262**

File Type: **Appointment**

Department: **Clerk of Council**

Introduced: **9/9/2015**

Date of Final Action:

Enactment Number:

Effective:

Status: **Received By Clerk's Office**

Created By: **Tamytha Lee**

Phone:

Requestor: **Tamytha Lee**

Phone: **757-727-6315**

Presenter:

Phone:

Title: **to consider appointments to the Finance Committee**

Action Requested: **discuss in the afternoon, appoint in the evening**

Estimated Time: **10 minutes**

Indicators:

Advertised:

Fiscal Notes:

Attachments:

Date	Acting Body	Action
8/31/2015		Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:

Susan Harris filled a partial term which will expire on September 30, 2015. She is eligible for reappointment to her first full term which will expire on September 30, 2019.

There are individuals in the Board Bank who have expressed a desire to serve on this board. Those applications are being provided to Council.



**City of Hampton, VA**

**Agenda Review**

**File Number: 15-0274**

22 Lincoln Street  
Hampton, VA 23669  
[www.hampton.gov](http://www.hampton.gov)

File Number: **15-0274**

Request Number: **R-2015-00265**

File Type: **Appointment**

Department: **Clerk of Council**

Introduced: **9/9/2015**

Date of Final Action:

Enactment Number:

Effective:

Status: **Received By Clerk's Office**

Created By: **Joy Mautz**

Phone:

Requestor: **Joy Mautz**

Phone: **757-727-6315**

Presenter: **N/A**

Phone:

Title: **to consider an appointment to the Peninsula Agency on Aging**

Action Requested: **discuss in the afternoon, appoint in the evening**

Estimated Time: **10 minutes**

Indicators:

Advertised:

Fiscal Notes:

Attachments:

Date	Acting Body	Action
8/31/2015		Received By Clerk's Office

**BRIEF BACKGROUND STATEMENT:**

Celestine Carter's term will expire on September 30, 2015 and has asked not to be reappointed to another term. Council is being asked to appoint a replacement to serve until September 30, 2019.

The committee has submitted a recommendation letter to Council requesting the appointment of Wendell Braxton.

There are individuals in the Board Bank who have expressed a desire to serve on this board. Those applications are being provided to Council.





**City of Hampton, VA**

**Agenda Review**

**File Number: 15-0275**

22 Lincoln Street  
Hampton, VA 23669  
[www.hampton.gov](http://www.hampton.gov)

---

File Number: **15-0275**

Request Number: **R-2015-00267**

File Type: **Appointment**

Department: **Clerk of Council**

Introduced: **9/9/2015**

Date of Final Action:

Enactment Number:

Effective:

Status: **Received By Clerk's Office**

---

Created By: **Joy Mautz**

Phone:

Requestor: **Joy Mautz**

Phone: **757-727-6315**

Presenter: **N/A**

Phone:

Title: **to consider an appointment to the Hampton Arts Commission**

Action Requested: **discuss in the afternoon, appoint in the evening**

Estimated Time: **10 minutes**

Indicators:

Advertised:

Fiscal Notes:

Attachments:

---

Date	Acting Body	Action
8/31/2015		Received By Clerk's Office

---

**BRIEF BACKGROUND STATEMENT:**

Council is being asked to appoint Laura Fitzpatrick to the Hampton Arts Commission as the City Manager's designee for a four year term to expire on June 30, 2019.



City of Hampton, VA

Agenda Review

File Number: 15-0276

22 Lincoln Street  
Hampton, VA 23669  
[www.hampton.gov](http://www.hampton.gov)

File Number: **15-0276**

Request Number: **R-2015-00268**

File Type: **Appointment**

Department: **Clerk of Council**

Introduced: **9/9/2015**

Date of Final Action:

Enactment Number:

Effective:

Status: **Received By Clerk's Office**

Created By: **Joy Mautz**

Phone:

Requestor: **Joy Mautz**

Phone: **757-727-6315**

Presenter: **N/A**

Phone:

Title: **to consider appointments to the Board of Review of Real Estate Assessments**

Action Requested: **discuss in the afternoon, appoint in the evening**

Estimated Time: **10 minutes**

Indicators:

Advertised:

Fiscal Notes:

Attachments:

Date

Acting Body

Action

8/31/2015

Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:

Thomas Perham has served one full term which expired on June 30, 2015. He is eligible for reappointment to a second full term which will expire on June 30, 2019.

Dale Evans has served one partial term which expired on June 30, 2015. He is eligible for reappointment to a first full term which will expire on June 30, 2019.

There are individuals in the Board Bank who have expressed a desire to serve on this board. Those applications are being provided to Council.

